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The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States

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Summary

Although states have a great deal of autonomy in how they establish and run their unemployment insurance programs, federal law requires states to pay Unemployment Compensation (UC) benefits promptly as provided under state law. During some recessions, current taxes and reserve balances may be insufficient to cover state obligations for UC benefits. States may borrow funds from the federal loan account within the Unemployment Trust Fund (UTF) to meet UC benefit obligations.

This report summarizes how insolvent states may borrow funds from the UTF loan account to meet their UC benefit obligations. It includes the manner in which states must repay federal UTF loans. It also provides details on how the UTF loans may trigger potential interest accrual and explains the timetable for increased net Federal Unemployment Taxes Act (FUTA) taxes if the funds are not repaid promptly.

Outstanding loans listed by state may be found at the Department of Labor's (DOL's) website, https://ows.doleta.gov/unemploy/budget.asp.

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Unemployment Compensation (UC) is a joint federal-state program financed by federal payroll taxes under the Federal Unemployment Tax Act[1] (FUTA) and by state payroll taxes under State Unemployment Tax Acts (SUTA).[2] These revenues are deposited into the appropriate account within the federal Unemployment Trust Fund (UTF).

Originally, the intent of the UC program, among other goals, was to help counter economic fluctuations such as recessions.[3] This intent is reflected in the current UC program's funding and benefit structure. When the economy grows, UC program revenue rises through increased tax revenues. At the same time, UC program spending falls because fewer workers are unemployed. The effect of collecting more taxes while decreasing spending on benefits dampens demand in the economy. It also creates a surplus of funds, or a *reserve fund*, for the UC program to draw upon during a recession. These reserve balances are credited in the state's account within the UTF. During an economic slowdown or recession, UC tax revenue falls and UC program spending rises as more workers lose their jobs and receive UC benefits. The increased amount of UC payments to unemployed workers dampens the economic effect of lost earnings by injecting additional funds into the economy.

State and Federal Unemployment Taxes

State Unemployment Taxes

States levy their own payroll taxes (SUTA) on employers to fund regular UC benefits and the state share (50%) of the Extended Benefit (EB) program.[4] Federal laws and regulations provide broad guidelines for these state taxes. Each state deposits its SUTA revenue into its account within the UTF.

SUTA revenue finances UC benefits. Generally, when economic activity is robust and increasing, SUTA revenue is greater than a state's UC expenditures. As a result, the state's reserves within the UTF grow. This trend is reversed during economic recessions and during the early economic recovery period, when the state's reserves are drawn down and new SUTA revenue does not always make up the shortfall.

[1] §§ 3301-3311 of the Internal Revenue Code of 1986 (26 U.S.C. §§3301-33011). For a complete description of FUTA, see CRS Report R44527, *Unemployment Compensation: The Fundamentals of the Federal Unemployment Tax (FUTA)*.

[2] The underlying framework of the Unemployment Compensation (UC) program is contained in the Social Security Act (SSA). Title III of the SSA authorizes grants to states for the administration of state UC laws, Title IX authorizes the various components of the federal Unemployment Trust Fund (UTF), and Title XII authorizes advances or loans to insolvent state UC programs.

[3] See, for example, President Franklin Roosevelt's remarks at the signing of the SSA at http://www.ssa.gov/history/fdrstmts.html#signing.

[4] The Extended Benefit (EB) program was established by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), P.L. 91-373 (26 U.S.C. 3304, note). EUCA may extend receipt of unemployment benefits by 13 weeks or 20 weeks at the state level if certain economic situations exist within the state. For details, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*.

If the recession is deep enough and if SUTA revenue is inadequate for long periods of time, states may have insufficient funds to pay for UC benefits. Federal law, which requires states to pay these benefits, provides a loan mechanism within the UTF framework that an insolvent state may opt to use to meet its UC benefit payment obligations.[5] States must pay back these loans. If the loans are not paid back quickly (depending on the timing of the beginning of the loan period), states may face interest charges and the states' employers may face increased net FUTA rates until the loans are repaid.

In the years immediately following the most recent recession, many states had insufficient SUTA revenue and UTF account balances to pay UC benefits.

Federal Unemployment Taxes

All FUTA revenue is deposited into the Employment Security Administration Account (ESAA) within the UTF. Federal unemployment taxes pay for the federal share of EB (50%) and for administrative grants to the states. Additionally, through the federal loan account within the UTF, FUTA funds may be loaned to insolvent states to assist the payment of the states' UC obligations.

Net FUTA Rate Is 0.6%

FUTA imposes a 6.0% gross federal unemployment tax rate on the first $7,000 paid annually by employers to each employee. Employers in states with programs approved by the U.S. Labor Secretary and with no outstanding federal loans may credit up to 5.4 percentage points of state unemployment taxes paid against the 6.0% tax rate, making the minimum net federal unemployment tax rate 0.6%.[6]

Because most employees earn more than the $7,000 taxable wage ceiling in a calendar year, the FUTA tax typically is $42 per worker per year ($7,000 × 0.6%), or just over 2 cents per hour for a full-time, year-round worker.[7]

States Required to Pay UC Benefits

States have a great deal of autonomy in how they establish and run their unemployment insurance programs. However, the framework established by federal laws is clear and requires states to promptly pay the UC benefits as provided under state law.[8]

[5] Federal unemployment compensation law does not restrict the states from using loan resources outside of the UTF. Depending on state law, states may have other funding measures available and may be able to use funds from outside of the UTF to pay the benefits (such as issuing bonds).

[6] §3304 of FUTA (26 U.S.C. §3304) allows up to 5.4% credit for *actual* state unemployment taxes paid. Additionally, under §3303 of FUTA (26 U.S.C. §3303), employers that paid less than a 5.4% rate in state unemployment taxes are eligible for an *additional* state tax credit of up to 5.4%. The total state tax credit (actual and additional) on federal unemployment tax calculation is restricted to be no more than 5.4%. Thus, all employers in states with approved UC programs receive a 5.4% credit in the calculation of FUTA, even if the employer paid less than a 5.4% rate in state unemployment taxes.

[7] Assuming a full-time, year-round worker works 52 weeks per year and 40 hours per week (for 2,080 hours per year), 42 ÷ 2080 = $0.0202 and the state has no state tax credit reduction because of outstanding loans.

[8] §3304 of FUTA (26 U.S.C. §3304). If the state does not pay the UC benefits, federal law is explicit. The state will not have a UC program meeting federal requirements, and thus the federal unemployment tax paid by employers on each employee's annual earnings would be a net tax of 6.0% (that is, up to $420 per worker with no allowable state tax credit) rather than 0.6% if the state UC program paid benefits and had no outstanding loans.

In budgetary terms, UC benefits are an entitlement (although the program is financed by a dedicated tax imposed on employers and not by general revenue). Thus, even if a recession hits a given state and, as a result, that state's trust fund account is depleted, the state remains legally required to continue paying benefits. To do so, the state might borrow money either from the dedicated loan account[9] within the UTF or from outside sources.

If the state chooses to borrow funds from the UTF, not only will the state be required to continue paying benefits, it also will be required to repay the funds (plus any interest due) it has borrowed from the federal loan account within a few years. Such states may need to raise taxes on their employers or reduce UC benefit levels, actions that dampen economic growth, job creation, and consumer demand. In short, states have strong incentives to keep adequate funds in their trust fund accounts.

If the state borrows from sources outside the UTF, the state would not be subject to the loan restrictions described below. Instead, the state would be subject to the terms within that outside loan agreement, which might offer a different (more favorable) interest rate or repayment schedule but may include fees to establish the loan.

Funds Available for Loans to States Within the UTF

The Federal Unemployment Account (FUA) is the federal loan account within the UTF. Two automatic funding sources are available within the FUA. Additionally, the FUA may borrow funds from other federal accounts within the UTF or (if needed) from the general fund of the U.S. Treasury. From FY2009 to FY2015, the FUA had to borrow funds from the U.S. Treasury to finance loans to the state accounts.[10]

1. Excess revenue from the Extended Unemployment Compensation Account (EUCA) is deposited into the FUA.[11] In FY2018, the EUCA net balance is an estimated shortfall of (negative) $10.74 billion. Thus, no EUCA funds are projected to be distributed to the FUA in FY2018.
2. Revenue from additional FUTA taxes paid by employers when a reduced credit against federal unemployment taxes exists because the state has an outstanding unpaid loan from FUA is deposited into the FUA. (See the discussion below on "Federal Tax Increases on Outstanding Loans Through Credit Reductions" for a more detailed explanation of these additional taxes.)
3. Federal law allows the FUA to borrow available funds from the other federal (EUCA and ESAA) accounts within the UTF.[12]

[9] The Federal Unemployment Account (FUA).

[10] The FUA completed repaying its general fund advance balance in June of 2015, and FUA funds have since been used to assist in repaying the remaining general fund advances to the EUCA. The EUCA is projected to finish repaying its general fund advance loans in FY2018 but will continue to owe funds to the FUA while slowly repaying those non-interest bearing loans from the FUA. The net FUA balance is projected to remain around $12.5 billion for the duration of the projection period, whereas the net EUCA balance is projected to remain negative through 2021 as repayments continue to be made to the FUA.

[11] Following federal law, at the end of every month 20% of all newly collected FUTA revenue is deposited into the EUCA, which is authorized to pay for the federal share of EB. The EUCA balance is limited to the maximum of 0.5% of covered wages ($31.44 billion in FY2018). If the EUCA balance exceeds the limitation, the excess is distributed to the FUA.

[12] 42 U.S.C. 1110.

4. Federal law also authorizes appropriations as loans from the general fund of the U.S. Treasury if balances in the federal accounts are insufficient to cover their expenditures.[13] (For example, if the states' borrowing needs exceed the available FUA balance.) Such appropriations require discretionary action by Congress and the President.

Mechanism for Receiving a Loan from the UTF

Once a state recognizes that it does not have sufficient funds to pay UC benefits, the mechanism for receiving a loan from the UTF is straightforward. The state's governor (or the governor's designee) must submit a letter requesting that the U.S. Labor Secretary advance funds to the state account within the UTF. Once the loan is approved by the U.S. Labor Secretary, the funds are placed into the state account in monthly increments.

Loan Repayment

States with outstanding loans from the UTF must repay them fully by the November 10 following the second consecutive January 1 on which the state has an outstanding loan. If the outstanding loan is not repaid by that time, the state will face an effective federal tax increase. Thus, a state may have approximately 22 months (if borrowing began on January 1) to 34 months (if borrowing began on January 2) to repay the loan without a federal tax increase, depending on when it obtained the outstanding loan.

As of February 15, 2018, approximately $1.3 billion in federal UTF loans to the states were outstanding. A current list of states with outstanding loans may be found at the Department of Labor's (DOL's) website, https://ows.doleta.gov/unemploy/budget.asp.

Federal Tax Increases on Outstanding Loans Through Credit Reductions

If the state does not repay a loan by November 10 of the second year,[14] the state becomes subject to a reduction in the amount of state unemployment tax credit applied against the federal unemployment tax beginning with the preceding January 1 until the state repays the loan fully. Depending on the duration of the loan and certain other measures, one or more of three different credit reductions may be required. These reductions are fully catalogued in **Table 1**. At the height of the period following the most recent recession (2011), 20 states and the Virgin Islands faced increased FUTA rates because of outstanding UTF loans.[15]

Basic Credit Reduction

The credit reduction is initially a 0.3 percentage point reduction for the year beginning with the calendar year in which the second consecutive January 1 passes during which the loan is outstanding and increases by a 0.3 percentage point reduction for each year there is an outstanding loan. For example, in the first year, the credit reduction results in the net federal tax

[13] 42 U.S.C. 1323.

[14] The "second year" is the year when the state has outstanding UTF loans on January 1 for the second January 1 in a row. Depending on the timing when the first loan began, it may actually be the third year of the loan.

[15] See http://workforcesecurity.doleta.gov/unemploy/docs/reduced_credit_states.xlsx.

rate increasing from 0.6% to 0.9%—an additional $21 for each employee; in the second year, it would increase to 1.2%—a cumulative additional $42 for each employee.

Additional Credit Reductions: 2.7 Add-on and Benefit-Cost Ratio Add-on

Two potential other credit reductions exist (in addition to the cumulative 0.3 percentage point increases) during the ensuing calendar years in which a state has an outstanding loan:

1. Beginning in the third year, the 2.7 add-on uses a statutory formula that takes into consideration the average annual wages and average employment contribution rate.[16]
2. Beginning in the fifth year, the Benefit-Cost Ratio (BCR) add-on replaces the 2.7 add-on and uses the five-year benefit-cost rate as well as average wages in its calculation. [17]

Table 1 presents these reductions and the subsequent net FUTA tax faced by state employers as a result of these unpaid loans. If any January 1 passes without an outstanding balance, the year count starts over with the next loan. DOL maintains a list of potential reduced credit states at http://workforcesecurity.doleta.gov/unemploy/docs/reduced_credit_states.xlsx.

Table 1. Schedule of State Tax Credit Reduction and Net Federal Unemployment Tax Act (FUTA) Tax

Loan Year	Credit Reduction	Additional Reductions	Net FUTA Tax (0.6% + credit reductions)
Year 1 of outstanding loan	0.0%	None	0.6%
Year 2 (applied retroactively at end of calendar year)	0.3%	None	0.9%
Year 3	0.6%	2.7 Add-on	1.2% or more[a]
Year 4	0.9%	2.7 Add-on	1.5% or more[a]
Year 5	1.2%	BCR Add-on	1.8% or more[b]
Year 6	1.5%	BCR Add-on	2.1% or more[b]
Year 7	1.8%	BCR Add-on	2.4% or more[b]
Year 8	2.1%	BCR Add-on	2.7% or more[b]
Year 9	2.4%	BCR Add-on	3.0% or more[b]
Year 10	2.7%	BCR Add-on	3.3% or more[b]
Year 11	3.0%	BCR Add-on	3.6% or more[b]
Year 12	3.3%	BCR Add-on	3.9% or more[b]
Year 13	3.6%	BCR Add-on	4.2% or more[b]
Year 14	3.9%	BCR Add-on	4.5% or more[b]

[16] The 2.7 add-on formula is [(2.7% × 7000 ÷ U.S. Annual Average Wage) - Average Annual State Tax Rate on Total Wages] × State Annual Average Wage ÷ 7000.

[17] The Benefit-Cost Ratio (BCR) add-on formula is: Max [Five-year Average State Unemployment UC Outlays ÷ Taxable Wages, 2.7] - Average Annual State Unemployment Tax Rate on Total Wages.

Loan Year	Credit Reduction	Additional Reductions	Net FUTA Tax (0.6% + credit reductions)
Year 15	4.2%	BCR Add-on	4.8% or more[b]
Year 16	4.5%	BCR Add-on	5.1% or more[b]
Year 17	4.8%	BCR Add-on	5.4% or more[b]
Year 18	5.1%	BCR Add-on	5.7% or more[b]
Year 19	5.4%	BCR Add-on	6.0%

Source: U.S. Department of Labor, Employment and Training Administration.

Notes: 2.7 Add-on = [(2.7% × 7000 ÷ U.S. Annual Average Wage) - Average Annual State Tax Rate on Total Wages] × State Annual Average Wage ÷ 7000.

Benefit Cost Ratio (BCR) Add-on = Max [Five-year Average State Unemployment Compensation Outlays ÷ Taxable Wages, 2.7] - Average Annual State Unemployment Tax Rate on Total Wages.

a. Exact tax depends upon 2.7 Add-on calculation and whether state qualified for avoidance.

b. Exact net tax depends upon BCR Add-on calculation (or the 2.7 Add-on calculation, if the BCR Add-on is waived).

Avoiding Some or All of the Credit Reduction

Section 272 of P.L. 97-248 allows a delinquent state the option of repaying—on or before November 9—a portion of its outstanding loans each year through transfer of a specified amount from its account in the UTF to the FUA.

If the state complies with all the requirements listed below, the potential credit reduction is avoided (there is no reduction):

- The state must repay all loans for the most recent one-year period ending on November 9, plus the potential additional taxes that would have been imposed for the tax year based upon a state tax credit reduction.
- The state must have sufficient amounts in the state account of the UTF to pay all compensation for the last quarter of that calendar year without receiving a loan.
- The state also must have altered its state law to increase the net solvency of its account with the UTF.

From 2011 through 2014, South Carolina met these requirements. As a result, employers in South Carolina were not subject to a state tax credit reduction in the calculation of their FUTA taxes. (Generally, employers in South Carolina would have paid more in state unemployment taxes to meet these requirements.)

Avoiding Credit Reduction: Cap

Once a state begins to have a credit reduction, the state may apply to have the reductions capped if the state meets four criteria:

- No legislative or other action in 12 months ending September 30 has been taken to decrease the state's unemployment tax effort. (A state cannot actively decrease its expected state unemployment tax revenue from current law.)
- No legislative or other action has been taken to decrease the net solvency of the state's trust fund account. (For example, the state would not be allowed to actively increase the average UC benefit amount from current law requirements.)

- Average state unemployment tax rate on total wages must exceed the five-year average benefit-cost rate on total wages.
- Balance of outstanding loans as of September 30 must not be greater than the balance three years before.

Waiving the BCR Add-on

The BCR add-on may be waived if the Secretary of Labor determines the state did not take legislative or other actions to decrease the net solvency of the state's trust fund account. The 2.7 add-on would then replace the BCR add-on.[18]

Revenue from Credit Reductions Reduces State UTF Loans

The additional federal taxes attributable to the credit reduction are applied against the state's outstanding UTF loan. Thus, although technically employers are paying additional FUTA taxes, the additional tax pays off a state's debt. The state's employers will pay the additional federal taxes resulting from the credit reduction no later than January 31 of the next calendar year.

Interest Charges on Loans

Since April 1, 1982 (P.L. 97-35 as amended), states have been charged interest on new loans that are not repaid by the end of the fiscal year in which they were obtained.[19] (Before April 1, 1982, states could receive these loans interest free.)[20]

The interest is the same rate as that paid by the federal government on state reserves in the UTF for the quarter ending December 31 of the preceding year but not higher than 10% per annum. The interest rate for calendar year loans is determined by Section 1202(b)(4) of the Social Security Act. The interest rate for a calendar year is the earnings yield on the UTF for the quarter ending December 31 of the previous calendar year. The U.S. Treasury Department calculated the fourth-quarter earnings yield in 2017 to be 2.2153%. Thus, loans made in calendar year 2018 are subject to an interest rate of 2.2153%.[21]

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[18] California and the U.S. Virgin Islands applied for and received the BCR waiver for 2017. See http://workforcesecurity.doleta.gov/unemploy/docs/reduced_credit_states.xlsx for details.

[19] Interest payments can be delayed up to 9 months (and no interest on the unpaid interest would accrue) if the most recent 12-month average unemployment rate (from September of the previous year to August of that year) is 13.5% or higher [42 U.S.C. §1322(b)(9)]. If the state's January through June average insured unemployment rate (IUR) in the previous year is 6.5% or higher, the state would be required to pay 25% of that current year's interest that is due calculations [42 U.S.C. §1322(b)(3)(C)]. (The IUR is the ratio of UC claimants divided by individuals in UC-covered jobs. It excludes unemployed workers who have exhausted their UC benefits and the self-employed.) The state then would pay the remaining 25% in each of the next three years. The remainder of the interest payment would be not be subject to additional interest.

[20] §2004 of P.L. 111-5 temporarily waived interest payments and the accrual of interest on loans. The interest payments that were due from the time of enactment (February 17, 2009) until December 31, 2010, were deemed to have been made. No interest on advances accrued during the period. Although interest did not accrue during this period, this did *not* absolve states from repaying the underlying loans. If a state did not pay back funds within the prescribed amount of time or make good progress as determined by the Labor Secretary, the state tax credit was reduced. On January 1, 2011, the calculation of interest reverted to permanent law on interest charges.

[21] U.S. Department of Labor (DOL), Employment and Training Administration, *Interest Rate on Title XII Advances During Calendar Year (CY) 2018*, Training and Employment Notice (TEN) 13-17, February 5, 2018, https://wdr.doleta.gov/directives/attach/TEN/TEN_13-17_Acc.pdf.

States may not pay the interest directly or indirectly from SUTA revenue or funds in their state account within the UTF. If a state does not repay the interest, or if it pays the interest with funds from SUTA taxes, DOL is required by federal law to refuse to certify that state's program as being in compliance with federal law.[22] Not being in compliance with federal unemployment law would mean that the state would not be eligible to receive administrative grants and its state employers would not receive the state unemployment tax credit in the calculation of their federal unemployment taxes.

States may borrow funds without interest from the UTF during the year. To receive these interest-free loans, the states must meet five conditions:

1. The states must repay the loans by September 30.
2. For those repaid (by September 30) loans to maintain their interest-free status, there cannot be any loans made to that state in October, November, or December of the calendar year of such an interest-free loan. If loans are made in the last quarter of the calendar year, the "interest-free" loans made in the previous fiscal year will retroactively accrue interest charges.
3. The states must meet funding goals relating to their account in the UTF, established under regulations issued by DOL.

In addition to these first three requirements, the phase-in of two new requirements began in 2014.[23] The full effect of the requirements will begin in 2019.[24]

4. States must have had at least one year in the past five calendar years before the year in which advances are taken in which the Average High Cost Multiple[25] (AHCM) was greater than or equal to 1.0.
5. Additionally, states must meet two criteria for maintenance-of-tax effort in every year from the most recent year the AHCM was at least 1.0 and the year in which loans are taken.
    a. The average state unemployment tax rate (total state unemployment tax amount collected over total taxable wages) was at least 80% of the prior year's rate.
    b. The average state unemployment tax rate was at least 75% of the average benefit-cost ratio over the preceding five calendar years, where the benefit-cost ratio for a year is defined as the amount of benefits and interest paid in the year divided by the total covered wages paid in the year.

[22] 26 U.S.C. §3304(a)(17) and 42 C.F.R. §503(c)(3).

[23] DOL, Employment and Training Administration, "Federal-State Unemployment Compensation Program Funding Goals for Interest-Free Loans," 75 *Federal Register* 57146, September 17, 2010.

[24] The DOL publishes an annual report on the details of each state's solvency measures used in the determination of interest-free loans. See DOL, Office of Unemployment Insurance, Employment and Training Administration, *State Unemployment Insurance Trust Fund Solvency Report*, 2017, https://ows.doleta.gov/unemploy/solvency.asp.

[25] The average high-cost multiple (AHCM) is the ratio of actual UTF account balances to the average of the 3 highest years of benefit payments experienced by the state over the past 20 years. Presumably, the average of the 3 highest years' outlays would be a good indicator of potential expected UC payments if another recession were to occur. Under these assumptions, if a state had saved enough funds to pay for an average high year of UC benefit activity, its AHCM would be at least 1.0.

Status of Outstanding Loans, Accrued Interest Owed, and State Tax Credit Reductions

Table 2 lists all states that have outstanding loans.[26] The table also includes information on accrued interest payments for FY2017. The third column provides information on whether a state was subject to a credit reduction for tax year 2017. The last column provides the net FUTA tax faced by employers in each state that had an outstanding loan.

Table 2. Outstanding Loan Balances, Interest Owed, and 2017 State Tax Credit Reduction

(February 14, 2018)

State[a]	Outstanding Advance Balance ($)	Interest for FY2018 ($)	2017 Tax Credit Reduction (%)	2017 Net FUTA Tax (0.6% + credit reductions)
California	$1,213,035,332	$8,181,545	2.1[b]	2.7
Virgin Islands[c]	75,844,427	557,312	2.1[b]	2.7
Totals	1,288,879,760	8,738,857		

Source: Congressional Research Service table prepared using data from the U.S. Bureau of Public Debt, http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm, and the U.S. Department of Labor, http://ows.doleta.gov/unemploy/content/reduced_credit_states.xls.

Notes: States not listed on this table had no outstanding loans on February 14, 2018, had no outstanding interest accruals, and were not subject to a state tax credit reduction on the calculation of the net FUTA tax in 2017.

a. Under UC law, the District of Columbia, Puerto Rico, and the Virgin Islands are considered to be states.

b. For this year, the state received credit reduction add-on relief.

c. P.L. 115-123 temporarily forgave the Virgin Islands for interest payments due in 2017 until September 28, 2018, and exempts that interest from accruing additional interest during this period.

[26] If a state is not listed on this table, (1) the state did not have any outstanding loans on February 14, 2018, (2) did not have interest accruals in FY2017, and (3) was not subject to a state tax credit reduction on the calculation of the net FUTA tax in 2017.

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