

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION Reed Act
	CORRESPONDENCE SYMBOL OWS/OIS/DL
	DATE April 22, 2002

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 18-01

TO: ALL STATE WORKFORCE LIAISONS
ALL STATE WORKFORCE AGENCIES
ALL STATE WORKER ADJUSTMENT LIAISONS
ALL ONE-STOP CENTER SYSTEM LEADS

/S/

FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Reed Act Distribution

1. Purpose. To advise states of the federal law requirements applicable to the \$8 billion Reed Act distribution made on March 13, 2002.

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, Public Law 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); and Unemployment Insurance Program Letter (UIPL) 39-97 (62 Fed. Reg. 63960 (December 3, 1997)), UIPL 39-97, Change 1 (January 16, 2002) and UIPL 20-02 (April 4, 2002).

3. Background. On March 13, 2002, an \$8 billion distribution was made to the states' accounts in the Unemployment Trust Fund. The TEUCA labeled this transfer a "Reed Act" distribution although it differs from traditional Reed Act distributions, most notably because it was a set dollar amount, made without regard to the statutory ceilings in the federal accounts. Each state was advised of its share of this distribution in UIPL 20-02.

Like other Reed Act distributions, federal law governs how states may use this money. This \$8 billion Reed Act distribution is available for the payment of unemployment compensation (UC) and the administration of the state's UC law and its public employment service (ES) offices.

RESCISSIONS None	EXPIRATION DATE Continuing
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While the use of this \$8 billion distribution is limited by many of the same requirements that apply to other Reed Act distributions, there are also differences. Using a question and answer format, Attachment I explains these differences and other amendments to federal law relating to the Reed Act, and answers questions that have arisen since the TEUCA became law. A separate advisory which discusses suggested uses for the \$8 billion Reed Act distribution is under development.

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. Attachments.

I. REED ACT DISTRIBUTIONS UNDER THE TEMPORARY EXTENDED UNEMPLOYMENT
COMPENSATION ACT OF 2002 - QUESTIONS AND ANSWERS

II. TEXT OF SECTION 209 OF THE TEMPORARY EXTENDED UNEMPLOYMENT
COMPENSATION ACT OF 2002

ATTACHMENT I

REED ACT DISTRIBUTIONS UNDER THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002 QUESTIONS AND ANSWERS

IN GENERAL

1. Question: How was my state's share of the total amount of the \$8 billion Reed Act distribution determined?

Answer: In general, each state's share is based on its proportionate share of FUTA taxable wages for calendar year 2000. The specific formula is as follows:

- First, the amount of Reed Act moneys that would have been distributed in October 2001, had the distribution not been capped at \$100 million, was determined. This amount was about \$9.34 billion. (Section 903(d)(2)(A)(i), SSA, as added by the TEUCA.)
- Second, each state's share of the \$9.34 billion was determined based on the state's proportionate share of FUTA taxable wages in calendar year 2000. (Section 903(d)(2)(A), SSA, as added by the TEUC, and Section 903(a)(2), SSA.)
- Third, each state's share of the \$100 million actually distributed in October 2001 was deducted. This resulted in a figure of about \$9.24 billion. (Section 903(d)(2)(A)(ii), SSA, as added by the TEUCA.)
- Fourth, the \$8 billion cap was applied. (Section 903(d)(2)(B)(i), SSA, as added by the TEUCA.) According to Section 903(d)(2)(B)(ii), SSA, as added by the TEUCA, this reduction is applied "ratably." This means that each state's share of the \$9.24 billion was reduced proportionately to result in the \$8 billion distribution.

2. Question: My state has borrowed under Title XII, SSA, so that it can continue to pay benefits. Does this affect my Reed Act distribution?

Answer: Yes. The amendments state that the existing provisions applying to any outstanding advances shall apply. Specifically, Section 209(c), TEUCA, provides that Section 903(b), SSA, "shall apply to" the \$8 billion Reed Act transfer. Section 903(b)(2), SSA, provides that the Reed Act distribution for a state will be reduced "by the balance of advances made to the State under section 1201, SSA" for purposes of reducing the outstanding loan. The upshot is that the state with an

outstanding loan receives its full share of the distribution in terms of dollars; however,

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the amount distributed as Reed Act moneys is reduced or eliminated depending on whether the outstanding advance exceeds the state's share of Reed Act funds.

3. Question: For what may the \$8 billion distribution be used?

Answer: As is the case with regular Reed Act distributions, the amounts are limited to the payment of UC and the administration of the state's UC law and its system of public employment offices. More specific information is provided in the Questions and Answers under "Use for Benefits" and "Use for UC and ES Administration." Details about requirements related to use of these funds are provided in a series of Questions and Answers below.

4. Question: If the \$8 billion transfer is limited to the payment of certain administrative costs and the payment of UC, does this mean it may not be used to reduce employer taxes?

Answer: No. The use limitations apply only to expenditures. A state's share of the Reed Act distribution may increase the balance in the state's unemployment fund, and, as a result, lower employer taxes. Employer rates must, however, continue to be assigned on the basis of an employer's experience as provided under Section 3303(a)(1), FUTA.

USE FOR BENEFITS

5. Question: Is the use for benefits of the \$8 billion distribution in any way restricted? For example, is it restricted to the payment of part-time workers or payments based on alternative base periods?

Answer: There are some restrictions. In general, the distribution may be used for the payment of regular compensation, including increased weekly benefit amounts, and certain payments of additional compensation, but not for the state's share of extended benefits (EB). More specifically, the distribution may be used for any of the following benefit purposes for weeks of unemployment beginning after March 9, 2002:

- The distribution may be used for the payment of "regular compensation." (Section 903(d)(3)(B)(i)(I), SSA, as added by the TEUCA.) Thus, any amount of regular UC payable under the state's UC law is permissible.
- "At the option of the State," the regular compensation "may include amounts which shall be payable to 1 or more categories of individuals not otherwise eligible for regular compensation," including part-time workers and those individuals who would qualify under an alternative base

period. (Section 903(d)(3)(C), SSA, as added by the TEUCA.) Since this provision simply lists options, it is not exhaustive. However, if a state amends

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its law to pay any of these additional categories, the UC paid to such individuals “may not, for any period of unemployment, exceed the maximum amount of regular compensation authorized” under the state’s UC law for the same period. Thus, if the state elects to pay these special categories out of this \$8 billion Reed Act distribution, the benefit entitlement is limited to that applicable to other workers. For example, a worker using an alternative base period under this provision is limited to using it for purposes of qualifying for the same weekly and maximum benefit amounts as other workers.

- The distribution may be used for the payment of “additional compensation,” but only upon the exhaustion of TEUC for individuals who would be “eligible for regular compensation,” but for the fact that they had exhausted entitlement to that regular compensation. (Section 903(d)(3)(B)(i)(II), SSA, as amended by the TEUCA.) “Additional compensation” is defined as “compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.” (Section 205(d) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended.)
- The distribution may not be used for the state share of EB under the Federal-State Extended Unemployment Compensation Act of 1970. The distribution may only be used for payment of regular and additional compensation as described above.

Note that, if a payment is not allowed under the Reed Act requirements, the state may instead pay the amount from other moneys in its unemployment fund as long as the payment meets the definition of “compensation,” that is, cash benefits payable to individuals with respect to their unemployment. (Section 3306(h), FUTA.)

6. Question: There are workers in my state who exhausted regular compensation, but who are not eligible for TEUC. May I pay additional compensation to these workers from this Reed Act distribution? Does this additional compensation fall under the “categories of individuals not otherwise eligible for regular compensation?”

Answer: The answer to both questions is “no.” Since the use of the Reed Act moneys for additional compensation is explicitly restricted to TEUC exhaustees, additional compensation does not fall under the “categories of individuals not otherwise eligible for regular compensation.” Since the examples of these categories pertain only to payments of regular compensation, they do not authorize the payment of additional compensation to individuals ineligible for TEUC. (Section 903(d)(3)(C)(iii), SSA, as amended by the TEUCA.)

7. Question: May my state use the \$8 billion Reed Act distribution to pay for weeks of unemployment occurring prior to the date of enactment (March 9, 2002)?

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Answer: No. The law explicitly limits payments to “weeks of unemployment beginning after the date of enactment.” (Section 903(d)(3)(D), SSA, as amended by the TEUCA.)

8. Question: Do the amendments change the treatment of EB due to the receipt of additional benefits?

Answer: Yes. Under current EB law, any additional compensation received by an individual causes a reduction in the amount of EB payable. (Section 202(b)(1) of the Federal-State Extended Unemployment Compensation Act of 1970.) However, the amendments supersede this requirement. Additional compensation paid from the \$8 billion Reed Act distribution, which is paid “upon the exhaustion” of TEUC, does not reduce EB entitlement by the amount of additional benefits paid. (Section 903(d)(3)(B)(ii), SSA, as added by the TEUCA.) The additional compensation to which this provision applies need not be created following the Reed Act distribution; it may be a longstanding state program. Instead, the key is whether the state uses the \$8 billion distribution to finance these benefits. Once there are no longer TEUC exhaustees in the claimant population, this exception will have no effect.

USE FOR UC AND ES ADMINISTRATION

9. Question: If my state wants to use the \$8 billion Reed Act distribution for administrative purposes, must my state’s legislature first appropriate the money?

Answer: Yes. The appropriation is explicitly required. (Specifically, Section 903(d)(4), SSA, as added by the TEUCA, says the distribution may be used for administrative purposes “subject to” the appropriation requirements of Section 903(c)(2), SSA.) However, the amendments also provide that one of the existing state appropriation requirements does not apply. State appropriations are not required to specify that moneys appropriated must be obligated within the two-year period beginning on the date of enactment of the state’s appropriation law. States are free to obligate moneys beyond this two-year date. (State law may, however, restrict the obligation period to two years or less.)

10. Question: Prior to the enactment of the TEUCA, my state enacted an appropriation allowing Reed Act moneys distributed in fiscal year 2002 to be used for UC administrative purposes. Does this appropriation allow my state to use some/all of its share of the \$8 billion Reed Act distribution for UC administration?

Answer: The Department has previously permitted Reed Act moneys to be appropriated in advance of

their availability. Therefore, it is possible that an existing state appropriation of fiscal year 2002 Reed Act moneys permits the expenditure for UC administration of the state's share of the \$8 billion Reed Act distribution. The state will need to examine its Reed Act appropriation

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law to determine if it is sufficiently broad to permit expenditure of amounts transferred to it under Section 903(d), SSA. Also, the state will need to determine if its general appropriation laws permit this.

11. Question: How long is the \$8 billion Reed Act distribution available for administrative purposes?

Answer: There is no time limit on the use of this distribution (or any other Reed Act distribution) for administrative purposes.

12. Question: May the \$8 billion Reed Act distribution be used for the administration of my state's One-Stop system?

Answer: Yes. Reed Act moneys may be used for the "administration of . . . public employment offices." (Section 903(c)(2), SSA.) The Department has in the past taken the position that "administration of . . . public employment offices" means any function fundable under the Wagner-Peyser Act. As a result, Reed Act funds may be used in the same manner that Wagner-Peyser Act funds are used to support One-Stop systems. Examples of activities that support administration and service delivery of employment and workforce information services in One-Stop offices include:

- Staff for delivery of appropriate core and intensive service employment services;
- Equipment and resources for resource rooms;
- Payment for rent, utilities, and maintenance of facilities, including common spaces such as resource rooms, reception areas, conference areas, etc. in accordance with cost sharing guidelines;
- Shared costs for operation of local one-stops including payment for one-stop operators in accordance with cost sharing guidelines;
- Development of products that support service delivery such as labor market information products and job bank technology;
- Computer equipment, network equipment, telecommunications equipment, application development, and other technology resources, including assisted technology, that support employment and workforce information service delivery;
- Outreach and educational materials targeted at users of one-stop employment and workforce information services;
- Training, technical assistance, and professional development of staff who deliver employment and workforce information services.

This list is not exhaustive, but only intended to provide examples of activities in the One-Stop system for which Reed Act funds may be used. Guidelines on permissible uses of Wagner-Peyser funds are found in 20 CFR Parts 652 and 667. In addition, the Department plans to post guidance entitled *One-Stop Comprehensive Financial Management Technical Assistance Guide* on Employment and Training Administration websites in the near future.

13. Question: May the \$8 billion Reed Act distribution be used to pay the costs of job training?

Answer: No. Except for training provided to UC and ES staff, Reed Act moneys may not be used to provide occupational skill training because this training is not a cost of administering either the state's UC law or its public employment offices. Just as with Wagner-Peyser funds, the Reed Act moneys may, however, be used for activities that are presented in a training format or a group setting but generally fall within the category of job search and placement services (e.g., teaching individuals how to interview for a job or how to complete a resume).

14. Question: My state is using its share of the \$8 billion Reed Act distribution to pay the benefits costs associated with the enactment of an alternative base period (or other expansion). How will my state's implementation costs be paid?

Answer: A state may use its UC grant to pay for these implementation costs. Alternatively, since Reed Act moneys may be used for administration of the state's UC law, the state may appropriate Reed Act moneys to pay for costs of implementation.

15. Question: Will my state be able to use UC and ES administrative grants to amortize Reed Act purchases made with my state's share of the \$8 billion distribution?

Answer: Yes. Amortization relates to the permissible use of UC and ES administrative grants; this area is not addressed by the TEUCA. See UIPLs 39-97 and UIPL 39-97, Change 1, for guidance on when amortization is permissible.

16. Question: Is OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, applicable to the \$8 billion distribution or any other Reed Act distribution?

Answer: No. OMB Circular A-87 applies only to federal grants and cooperative agreements and Reed Act funds are neither. Use of Reed Act funds for administrative activities is governed by Section 903(c)(2), SSA, which limits use to administration of the state's UC law and/or public employment offices under the conditions specified in that section. However, since Reed Act moneys may not pay

costs for non-UI/non-ES programs, in cases where an activity (such as purchasing a multi-agency computer) benefits other activities, it will still be necessary to ensure that non-UI/non-ES costs are not paid from Reed Act funds. In these cases, states must allocate

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costs. Although states will not be required to submit cost allocation plans in such cases, in the event any plan is reviewed by the Department, cost allocation requirements applicable to grants will be applied to the plan.

17. Question: May I withdraw some or all of the \$8 billion Reed Act distribution and use it to set up an administrative fund at the state level that would earn interest that could be used for administrative expenses?

Answer: No. Withdrawing amounts to create an investment fund at the state level is inconsistent with the limitations on the use of Reed Act moneys. That is, the Reed Act moneys would not be used for the payment of compensation or the administration of the state's UC law or system of public employment offices. Instead, the money would be withdrawn for purposes of investment. See page 12 of Attachment I to UIPL 39-97.

18. Question: If my state uses the \$8 billion Reed Act distribution to pay for benefits, may the amounts so used be restored so that the state can use them for administrative payments?

Answer: No. The restoration provisions of the SSA are limited to "amounts transferred to the account of a State pursuant to subsections (a) **and** (b)" of Section 903, SSA. (Emphasis added; Section 903(c)(3)(A)(i), SSA.) The \$8 billion Reed Act distribution was not transferred to states under these two subsections; instead it was transferred under subsection (d) of Section 903, as added by the TEUCA.

19. Question: May the interest earned on the Reed Act balances be used for UC and ES administration?

Answer: No. The amount of any Reed Act distribution is limited to the actual dollar amount transferred to the states. Therefore, interest earnings are not available for administrative purposes.

\$100 MILLION DISTRIBUTIONS MADE IN 1999 - 2001

20. Question: Do the amendments affect the use of the capped \$100 million Reed Act distributions that were made in October of 1999, 2000, and 2001?

Answer: No. Although the TEUCA amendments repealed those provisions of Section 903, SSA,

addressing these capped distributions, it also contained a savings clause providing that “[a]ny amounts transferred before the date of enactment of this Act . . . shall remain subject to section 903 of the Social Security Act, as last in effect before such date of enactment.” (Section 209(a)(2), TEUCA.) Since all these capped distributions were transferred prior to the TEUCA’s

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enactment, their use continues to be restricted to UC administration, and no appropriation by the state legislature is required. Although there is some indication in the legislative history that Congress intended to repeal this use limitation and reimpose the appropriation requirement, the plain language of the law produces the opposite result.

STATE REED ACT LAWS

21. Question: Is the Department providing draft appropriation language?

Answer: Two alternative versions of draft language were provided in Attachment II of UIPL 39-97. Both of these may be used without change, except as noted in the following paragraph. Also, Alternative II may be modified to delete the provision required by Section 2 of that alternative, which pertains to the 2-year limitation on obligations since, as explained above, the 2-year limitation does not apply to the \$8 billion distribution.

Care should be taken in crafting state appropriation bills to assure the source of the Reed Act moneys is clear. There should be no doubt about whether the moneys used derive from traditional Reed Act distributions (those made in the 1950’s and in October of 1998); the \$100 million distributions made in October of 1999, 2000, and 2001; and the \$8 billion Reed Act distribution. The state may indicate that it is using its share of the \$8 billion by specifically referencing Section 903(d), SSA, in the appropriation bill or referencing the specific date on which the transfer was made to the state (March 13, 2002). Without this information, the Department will be unable to determine if the appropriation is consistent with the applicable use requirements.

22. Question: Will the states need to change their permanent Reed Act provisions?

Answer: This will need to be determined by each state. Some states may restrict the use of Reed Act funds for administration purposes to amounts transferred under Section 903(c), SSA. Since the \$8 billion transfer was made under Section 903(d), SSA, states may need to make this change. The Department is evaluating whether draft language should be provided in this area.

REPORTING REQUIREMENTS

23. Question: What are the reporting instructions for the Reed Act money?

Answer: States are required to report **all** Reed Act transactions on the ETA 8403. The report is required each month a transaction occurs (e.g., deposits to the state account, withdrawals from the account, enactment of state appropriations). These reports are not required if there is no Reed Act activity. See ETA Handbook 401. The Department expects to have these transactions

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reported on-line through the Treasury's Automated Standard Application for Payments (ASAP) soon, and states will receive additional instructions at that time.

Reed Act reporting instructions for the ETA 2112 are unchanged. (See ETA Handbook 401, 3rd Edition, May 2000.)

ATTACHMENT II

**TEXT OF SECTION 209 OF
THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002**

SEC. 209. SPECIAL REED ACT TRANSFER IN FISCAL YEAR 2002.

(a) REPEAL OF CERTAIN PROVISIONS ADDED BY THE BALANCED BUDGET ACT OF 1997.-

(1) IN GENERAL.- The following provisions of section 903 of the Social Security Act (42 U.S.C. 1103) are repealed:

(A) Paragraph (3) of subsection (a).

(B) The last sentence of subsection (c)(2).

(2) SAVINGS PROVISION.- Any amounts transferred before the date of enactment of this Act under the provision repealed by paragraph (1)(A) shall remain subject to section 903 of the Social Security Act, as last in effect before such date of enactment.

(b) SPECIAL TRANSFER IN FISCAL YEAR 2002.- Section 903 of the Social Security Act is amended by adding at the end the following:

 `Special Transfer in Fiscal Year 2002

 `d(1) The Secretary of the Treasury shall transfer (as of the date determined under paragraph (5)) from the Federal unemployment account to the account of each State in the Unemployment Trust Fund the amount determined with respect to such State under paragraph (2).

 `2(A) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to-

 `i the amount which would have been required to have been transferred under this section to such account at the beginning of fiscal year 2002 if--

 `I section 209(a)(1) of the Temporary Extended Unemployment Compensation Act of 2002 had been enacted before the close of fiscal year 2001, and

 `II section 5402 of Public Law 105-33 (relating to increase in Federal unemployment account ceiling) had not been enacted,
 minus

 `ii the amount which was in fact transferred under this section to such account at the beginning of fiscal year 2002.

 `B) Notwithstanding the provisions of subparagraph (A)--

 `i the aggregate amount transferred to the States under this subsection may not exceed a total of \$8,000,000,000; and

 `ii all amounts determined under subparagraph (A) shall be reduced ratably, if and to the extent necessary in order to comply with the limitation under clause (i).

 `3(A) Except as provided in paragraph (4), amounts transferred to a State account pursuant to this

subsection may be used only in the payment of cash benefits--

`(i) to individuals with respect to their unemployment, and

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`(ii) which are allowable under subparagraph (B) or (C).

`(B)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable as--

`(I) regular compensation, or

`(II) additional compensation, upon the exhaustion of any temporary extended unemployment compensation (if such State has entered into an agreement under the Temporary Extended Unemployment Compensation Act of 2002), for individuals eligible for regular compensation under the unemployment compensation law of such State.

`(ii) Any additional compensation under clause (i) may not be taken into account for purposes of any determination relating to the amount of any extended compensation for which an individual might be eligible.

`(C)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable to 1 or more categories of individuals not otherwise eligible for regular compensation under the unemployment compensation law of such State, including those described in clause (iii).

`(ii) The benefits paid under this subparagraph to any individual may not, for any period of unemployment, exceed the maximum amount of regular compensation authorized under the unemployment compensation law of such State for that same period, plus any additional compensation (described in subparagraph (B)(i)) which could have been paid with respect to that amount.

`(iii) The categories of individuals described in this clause include the following:

`(I) Individuals who are seeking, or available for, only part-time (and not full-time) work.

`(II) Individuals who would be eligible for regular compensation under the unemployment compensation law of such State under an alternative base period.

`(D) Amounts transferred to a State account under this subsection may be used in the payment of cash benefits to individuals only for weeks of unemployment beginning after the date of enactment of this subsection.

`(4) Amounts transferred to a State account under this subsection may be used for the administration of its unemployment compensation law and public employment offices (including in connection with benefits described in paragraph (3) and any recipients thereof), subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to `subsections (a) and (b)' in subparagraph (D) thereof to include this subsection).

`(5) Transfers under this subsection shall be made within 10 days after the date of enactment of this paragraph.'.

(c) LIMITATIONS ON TRANSFERS.- Section 903(b) of the Social Security Act shall apply to transfers under section 903(d) of such Act (as amended by this section). For purposes of the preceding sentence, such section 903(b) shall be deemed to be amended as follows:

(1) By substituting `the transfer date described in subsection (d)(5)' for `October 1 of any fiscal

year'.

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(2) By substituting `remain in the Federal unemployment account' for `be transferred to the Federal unemployment account as of the beginning of such October 1'.

(3) By substituting `fiscal year 2002 (after the transfer date described in subsection (d)(5))' for `the fiscal year beginning on such October 1'.

(4) By substituting `under subsection (d)' for `as of October 1 of such fiscal year'.

(5) By substituting `(as of the close of fiscal year 2002)' for `(as of the close of such fiscal year)'.

(d) TECHNICAL AMENDMENTS.- (1) Sections 3304(a)(4)(B) and 3306(f)(2) of the Internal Revenue Code of 1986 are amended by inserting `or 903(d)(4)' before `of the Social Security Act'.

(2) Section 303(a)(5) of the Social Security Act is amended in the second proviso by inserting `or 903(d)(4)' after `903(c)(2)'.

(e) REGULATIONS.- The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section and the amendments made by this section.