

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE December 12, 2018

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-19

TO: STATE WORKFORCE AGENCIES

**FROM: MOLLY E. CONWAY /s/
 Acting Assistant Secretary**

SUBJECT: Recovery of Certain Unemployment Compensation Debts under the Treasury Offset Program

1. **Purpose.** To remind state workforce agencies (SWAs) that Federal law requires all states to participate in the Internal Revenue Service (IRS) Treasury Offset Program (TOP) to recover delinquent unemployment compensation (UC) debts for benefit overpayments due to fraud, benefit overpayments due to a claimant’s failure to report earnings, and delinquent UC taxes.

2. **Action Requested.** SWAs and other state agencies with shared administrative responsibilities of the UC program must take steps to complete all TOP enrollment requirements outlined by the IRS and subsequently refer certain types of delinquent UC debts (benefit overpayments and UC taxes) for collection to the IRS’s Bureau of Fiscal Services (BFS).

3. **Summary and Background.**

- a. SWAs are required, as a condition of receipt of grants to administer the UC program, to use TOP to recover certain types of covered UC debts that remain uncollected for a period of one year after the debt was processed by the state and determined to be due and collectible.
- b. On September 30, 2008, Public Law No. 110-328, the Supplemental Security Income Extension for Elderly and Disabled Refugees Act, was enacted. This Act amended Federal law to permit states to recover certain UC debts due to fraud under TOP. The Bipartisan Budget Act of 2013 (Pub. L. 113-67) mandated SWAs to use TOP to collect covered UC debts.

On November 5, 2015, the IRS determined that all entities defined as a “person” under 26 U.S.C. 7701(a)(1), which includes an individual, trust, estate, partnership, association, company or corporation, are subject to recovery of UC debts outlined in 26 U.S.C. 6402. The Employment and Training Administration (ETA) issued guidance that SWAs must

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submit certain covered UC debt to TOP. Those debts include benefit overpayments due to fraud, benefit overpayments due to a claimant's failure to report earnings, and delinquent employer UC debt.¹ Most SWAs are enrolled in TOP for UC benefit overpayment recovery. However, many states are not utilizing TOP to recover delinquent employer UC debts.

- c. Between December 1, 2011, and September 30, 2018, SWAs have used TOP to recover \$2.45 billion in UC benefit overpayments and \$23.7 million in delinquent UC taxes.
- d. The U.S. Treasury Department's webpage provides additional information about TOP at https://fiscal.treasury.gov/fsservices/gov/debtColl/dms/top/debt_top.htm.

4. Required Use of TOP to Recover Certain UC Debts. As discussed above, Federal law requires SWAs to use TOP to recover certain UC debts. This section clarifies when payments must be collected and the process for doing so.

First, the obligation to collect payments using TOP does not occur unless payments have not been collected within one year, and the obligation only applies to certain UC debts. States may not use TOP to collect any other UC overpayments, including overpayments due to reversals of separation issues on appeal or other adjudications.² SWAs must use TOP to collect erroneous payments made to UC claimants that are due to fraud or to the person's failure to report earnings. This is true *even if the state does not find that the failure to report earnings constituted fraud*. Additionally, SWAs must use TOP to collect delinquent employer UC debt, including debts owed by an individual, trust, estate, partnership, association, company, or corporation. Corporate, partnership, and other entity UC tax debts meet the definition of a contribution due to a state's unemployment trust fund account under 26 U.S.C. 6402(f)(4).³

States must make reasonable attempts to collect the outstanding UC debt during the one-year period prior to referring the debt to TOP. The BFS establishes guidelines and sends periodic instructions on the debt certification and referral process. TOP referrals must include any penalty and interest associated with the delinquent debt, and the processing fee assigned by Treasury to recover the debt. SWAs are also responsible for maintaining current debt balances with the BFS and with state-initiated offset programs to avoid obtaining offsets that exceed debt balances.

The IRS has a two-tiered requirement to enroll in TOP for Federal income tax offsets. First, SWAs must meet the IRS Safeguards standards outlined in IRS *Publication 1075*. SWAs that are not approved to access Federal tax information (FTI) must contact the IRS Office of Safeguards at SafeguardReports@irs.gov and request approval to access FTI. Second, after

¹ UIPL No. 12-14, *Required Use of the Treasury Offset Program to Collect Covered Unemployment Compensation Debt*.

² UIPL No. 11-11, *The Claims Resolution Act of 2010 (P.L. 111-291) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) – Provisions Affecting the Federal-State Unemployment Compensation Program*.

³ UIPL No. 2-09, Change 3, *Recovery of Unpaid Unemployment Insurance Employer Tax Debt Under the Treasury Offset Program*.

the SWA receives approval to access FTI, the SWA must contact BFS at stateoffsets@fiscal.treasury.gov and request enrollment in TOP.

The authority for contractors to access TOP FTI is established in 26 U.S.C. 6103. Contractors may be granted access to TOP FTI under 26 U.S.C. 6103(d) for tax administration; however, no contractors may be granted access to TOP FTI received under 26 U.S.C. 6103(l)(10) for benefit administration. Further, SWAs must conduct background investigations on agency or contract staff that use or plan to use FTI in the performance of their duties.

As a program integrity initiative, ETA will include the implementation of TOP for those UC debts covered by Federal law in the Fiscal Year 2020 State Quality Service Plan (List of Assurances) to ensure compliance with Federal requirements regarding the use of TOP. SWAs must complete all TOP enrollment requirements outlined by the IRS and subsequently refer delinquent benefit overpayments due to fraud, delinquent benefit overpayments due to a claimant's failure to report earnings, and delinquent UC tax debt for collection to the IRS's BFS.

5. **Inquiries.** Please direct inquiries to the appropriate ETA Regional Office.

6. **References.**

- Section 303(m) of the Social Security Act (SSA) (42 U.S.C. 503(m));
- Section 201 of the Bipartisan Budget Act of 2013 (Pub. L. 113-67);
- Sections 801 and 802 of the Claims Resolution Act of 2010 (Pub. L. 111-291);
- Section 3 of the SSI Extension for Elderly and Disabled Refugees Act of 2008 (Public Law No. 110-328);
- 26 U.S.C. § 3301 et seq., Federal Unemployment Tax Act (FUTA) ;
- 28 U.S.C. § 1746, Unsworn declarations under penalty of perjury;
- 26 U.S.C. § 6103, Confidentiality and disclosure of returns and return information;
- 26 U.S.C. § 6402, Authority to make credits or refunds;
- 31 CFR 285.8, Offset of tax refund payments to collect state income tax obligations;
- Internal Revenue Service (IRS) *Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies and Entities*;
- Unemployment Insurance Program Letter (UIPL) No. 12-14, *Required Use of the Treasury Offset Program to Collect Covered Unemployment Compensation Debt*;
- UIPL No. 11-11, *The Claims Resolution Act of 2010 (P.L. 111-291) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L.111-312) – Provisions Affecting the Federal-State Unemployment Compensation Program*;
- UIPL No. 02-09, *Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds*, and its changes;
- UIPL No. 22-96, *The Immediate Deposit and Withdrawal Standards*; and
- Training and Employment Notice No. 5-17, *Required Background Investigations for Employees and Contractors Who Access Federal Tax Information*.

7. **Attachments.** None