

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Withdrawal Standard – Child Support Fees
	CORRESPONDENCE SYMBOL OWS /DL
	DATE March 12, 2008

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-08

TO: STATE WORKFORCE AGENCIES

FROM: BRENT R. ORRELL /s/
Acting Assistant Secretary

SUBJECT: Treatment of Fees Collected by State Child Support Agencies

1. Purpose. To provide guidance regarding the application of Federal unemployment compensation (UC) law to the mandatory collection of fees related to child support collection.
2. References. Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Sections 303(e)(2), 454(6)(B)(ii), and 457(a)(3) of the Social Security Act (SSA); Unemployment Insurance Program Letter (UIPL) No. 45-89; and Section 7310 of the Deficit Reduction Act of 2005 (DRA), Public Law 109-171.
3. Background. States have long been required to deduct and withhold certain child support obligations from UC. (See Section (303)(e)(2), SSA, and UIPL No. 45-89.) In 2005, Section 7310 of the DRA amended Federal law to mandate that state child support agencies impose an annual fee of \$25 for collecting child support obligations under certain circumstances. In response to this mandate, some states have chosen to amend their laws and regulations. This UIPL is issued to assist the states in assuring that any such amendments are consistent with Federal UC law.
4. Federal Law. Section 3304(a)(4), FUTA, requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that—

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All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund. . . .

Section 303(a)(5), SSA, provides a similar requirement as a condition for a state to receive administrative grants. These provisions, known as the “withdrawal standard,” mean that money may only be withdrawn from the unemployment fund for payment of “compensation,” with certain specified exceptions. Section 3306(h), FUTA, defines “compensation” as “cash benefits payable to individuals with respect to their unemployment.” One exception to the withdrawal standard is found in Section 303(e)(2)(A), SSA, which requires a state UC agency to “deduct and withhold from any [UC] otherwise payable to an individual...” amounts to pay “child support obligations” pursuant to part D of Title IV of the SSA.

Section 7310 of the DRA added Section 454(6)(B)(ii) to the SSA, pertaining to state plans for child support, to require that, for each case where the custodial parent “has never received” Temporary Assistance for Needy Families, the state child support agency is to “impose an annual fee of \$25 for each case in which services are furnished, which shall be retained by the State *from support collected*, . . . paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds. . . .” (Emphasis added.) The amendment also added Section 457(a)(3), SSA, to provide that “the State shall distribute to the family the portion of the amount so collected that remains *after withholding any fee*. . . .” (Emphasis added.) The DRA did not amend Federal UC law.

5. Interpretation. Exceptions to the withdrawal standard are narrowly construed. Section 3 of UIPL No. 45-89 explained “that deductions may be made only when authorized by Federal law.” Paragraph 4.b of the UIPL added that, with specified exceptions, state law must provide that UC benefit payments “be exempt from levy, execution, attachment, order for the payment of attorneys fees or court costs, or any other remedy for the collection of public or private debts, prior to receipt by the claimant.” Therefore, absent an explicit statutory authorization, states may not deduct and withhold a processing fee from UC. Since the DRA did not amend Federal UC law, states may not deduct and withhold a processing fee from a claimant’s UC when deducting child support.

The DRA did, however, amend Federal law to provide that “collected” child support obligations may be used to pay the mandatory fee. As a result, after the full amount of the child support obligation has been deducted from a claimant’s UC and sent to the state child support agency, the child support agency may, consistent with Section 7310, DRA, withhold the processing fee before sending the balance of the child support collected to the child support recipient.

States are reminded that, when crafting legislation or regulations to implement the provisions of the DRA, care should be taken to ensure the requirements of the withdrawal standard, as

interpreted in this UIPL, are met. In short, a state law or regulation may not authorize the payment of the child support fee directly from UC, but it may authorize the payment of the fee from child support collected by the state child support agency consistent with Section 303(e)(2), SSA.

6. Action Required. State administrators are requested to review existing state law provisions and agency practices involving the child support intercept program to ensure consistency with Federal UC law requirements.