

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/ETA
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 12-14

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Required Use of the Treasury Offset Program to Collect Covered Unemployment Compensation Debt

1. **Purpose.** To provide guidance to state workforce agencies about the requirement in the Bipartisan Budget Act of 2013 (Budget Act) to use the Treasury Offset Program (TOP) to collect covered unemployment compensation (UC) debt.

2. **References.**

- Section 303(m) of the Social Security Act (SSA; 42 USC 503(m));
- Section 6402(f)(4), Internal Revenue Code (IRC) (26 USC 6402(f)(4));
- Section 201 of the Bipartisan Budget Act of 2013, Pub. L. 113-67;
- Section 503 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111-312;
- 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, Pub. L. 110-328;
- 31 CFR Part 285, *Offset of Federal Benefit Payments to Collect Past-due, Legally Enforceable Nontax Debt; Final Rule*; and
- Unemployment Insurance Program Letter (UIPL) No. 02-09; UIPL No. 02-09, Change 1; UIPL No. 02-09, Change 2; and UIPL No. 11-11.

3. **Background.** As discussed in previous guidance, Federal law was amended in 2008 to permit states to use the TOP to recover covered UC debts through offset from Federal income tax refunds. In 2010, Federal law was amended to expand the definition of a “covered unemployment compensation debt” to mean:

- a past-due debt for erroneous payment of UC due to fraud or the person's failure to report earnings, which has become final under the law of the state and which remains uncollected;
- contributions due to the unemployment fund of a state for which the state has determined the person to be liable and which remain uncollected; and
- any penalties and interest assessed on such debt.

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UIPL No. 11-11 explains that for benefit overpayments, “TOP may now be used to collect erroneous payments that are due either to fraud or to the person’s failure to report earnings, *even if the state does not find that such failure constituted fraud.*” (Emphasis added.) Concerning uncollected contributions, UIPL No. 11-11 explains that “any *past-due* contributions due to the unemployment fund of a state that remain uncollected for which the state has determined the person to be liable may be recovered using the TOP.” (Emphasis added.)

UIPL No. 11-11 also explains that “any overpayment that meets the requirements is a ‘covered’ UC debt, regardless of the UC program under which the debt is owed, and may be recovered using the TOP.” Thus, in addition to state UC program overpayments (e.g., regular UC or Extended Benefits), the TOP may be used for recovery of Federal UC program overpayments, such as Emergency UC, UC for Ex-Service Members, or UC for Federal Employees.

On December 26, 2013, President Obama signed into law the Bipartisan Budget Act. This Act amends section 303 of the SSA by adding a new paragraph (m) to require states, as a condition for receipt of grants to administer their UC programs, to use the TOP to recover covered UC debt that remains uncollected as of the date that is one year after the debt was finally determined to be due and collected. This requirement became effective on December 26, 2013 (i.e., the date of enactment of the Budget Act).

- 4. Required Use of the TOP to Recover Covered UC Debts.** All states are required, as a condition of receipt of grants to administer the UC program, to use the TOP to recover all types of covered UC debts that remain uncollected as of the date that is one year after the debt was finally determined to be due and collected. As explained above, covered UC debts include overpayments due to fraud or failure to report earnings, uncollected contributions that are past-due, and any associated penalties and interest. This requirement applies to all UC programs—state or Federal. States that do not use the TOP to recover all (or any) types of covered UC debt must take the steps necessary to do so.

While the required offset applies to past-due contributions owed by persons, the current UC TOP process applies to offsets against only the Federal individual income tax refund file. Since corporate refunds are not included in this file, UC tax TOP offsets are currently limited to those UC tax debts that can be certified by the state as being a liability of an individual. Thus, uncollected contributions attributable to a corporation cannot yet be submitted for collection through the TOP unless a state has the ability to hold certain individuals liable for unpaid corporate contributions. For example, most states should be able to submit uncollected contributions attributable to individuals in sole proprietorships, partnerships, or some limited liability companies to the TOP for collection. The Department of Labor (Department) is working with the U.S. Department of the Treasury (Treasury) concerning establishment of processes to offset corporate income tax refunds and will issue additional guidance when these offsets can begin to occur.

While this requirement became effective on December 26, 2013, we recognize that it will take time before states can commence recovering all covered UC debts using the TOP. Some

states may need to amend their UC laws in order to have the authority to use the TOP. We request that you review your state law immediately to determine if a statutory change is required in order to use the TOP to recover all covered UC debts. If additional legal authority is needed, the state must seek needed legislative action as soon as possible. To the extent possible, we expect that all states that need legislative action will enact conforming legislation during the 2014 session of their state legislatures, if they have a session and there is sufficient time. If a state needs to amend its law and does not have a 2014 session of its state legislature or otherwise does not enact conforming legislation in 2014, it must enact conforming legislation in the 2015 session of its state legislature. Understanding that legislative action where needed will take time, the Department will not raise a conformity issue as long as a state promptly begins to make, and is pursuing in good faith, a reasonable effort to enact legislation to provide the needed authority to recover all covered UC debts through the TOP.

Even if there are no legal barriers in a state, we note that the procedures a state must follow before it may enter into an agreement with the Treasury to use the TOP take a significant amount of time—typically at least six months. This includes establishing appropriate safeguards and making any information technology modifications needed to facilitate information exchanges between the state and Treasury. Understanding that this process will take time, the Department will not raise a substantial compliance issue as long as the state promptly begins to make, and is pursuing in good faith, a reasonable attempt to implement the recovery of all covered UC debts to the extent possible through the TOP.

5. **Action Requested.** State administrators should forward this information to the appropriate agency personnel.
6. **Inquiries.** Questions or concerns should be directed to the appropriate Regional Office.
7. **Attachment.** Text of Section 201 of the Bipartisan Budget Act of 2013.

TITLE II--PREVENTION OF WASTE, FRAUD, AND ABUSE

SEC. 201. IMPROVING THE COLLECTION OF UNEMPLOYMENT INSURANCE
OVERPAYMENTS.

(a) In General.--Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following:

“(m) In the case of a covered unemployment compensation debt (as defined under section 6402(f)(4) of the Internal Revenue Code of 1986) that remains uncollected as of the date that is 1 year after the debt was finally determined to be due and collected, the State to which such debt is owed shall take action to recover such debt under section 6402(f) of the Internal Revenue Code of 1986.”.

(b) Effective Date.--The amendment made by subsection (a) shall take effect upon the date of enactment of this Act.