

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UC TOP
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**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 2-09,
Change 3**

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU 
Assistant Secretary

**SUBJECT: Recovery of Unpaid Unemployment Insurance Employer Tax Debt Under the
Treasury Offset Program**

1. **Purpose.** To inform states of recent updates to the guidance provided by the Internal Revenue Service (IRS) for state unemployment insurance (UI) agencies using the Treasury Offset Program (TOP) to collect employer UI tax debt.
2. **References.**
 - Public Law No. 110-328, SSI Extension for Elderly and Disabled Refugees Act;
 - Title III of the Social Security Act;
 - The Internal Revenue Code (IRC), including the Federal Unemployment Tax Act (FUTA);
 - 31 CFR 285.8, Offset of tax refund payments to collect state income tax obligations;
 - 28 U.S.C. § 1746, Unsworn declarations under penalty of perjury;
 - Sections (b)(2), (l)(10), and (p)(4) of 26 U.S.C. § 6103, Confidentiality and disclosure of returns and return information;
 - 26 U.S.C. § 6402, Authority to make credits or refunds;
 - Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies;
 - Unemployment Insurance Program Letter (UIPL) No. 02-09, *Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds*;
 - UIPL No. 02-09, Change 1, *Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds*;
 - UIPL No. 02-09, Change 2, *Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds*;
 - UIPL No. 22-96, *The Immediate Deposit and Withdrawal Standards*, (61 Fed. Reg. 27101 (May 30, 1996));
 - Treasury Offset Program, Technical Bulletin, Number UIC 11-02, February 11, 2011;

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

3. **Background.** On September 30, 2008, the President signed Public Law No. 110-328, the SSI Extension for Elderly and Disabled Refugees Act. Among other things, this Act amended Federal law to permit states to recover certain UI debts due to fraud from the debtor's Federal income tax refunds under the TOP operated by the United States Department of the Treasury (Treasury). It also established certain "due process" requirements states must meet prior to establishing collection using TOP.

UIPL No. 02-09, issued on November 28, 2008, provided a general overview of the Federal amendments and the anticipated design of the unemployment compensation (UC) TOP. UIPL No. 02-09, change 1 and UIPL No. 02-09, change 2 provide state UI agencies with updated guidance to procedures on the implementation of the UC TOP. In particular, change 1 supersedes and replaces Section 5 of UIPL No. 02-09.

UIPL No. 12-14, issued on May 20, 2014, notified state UI agencies that the Bipartisan Budget Act of 2013 requires the use of UC TOP to collect covered UI debt.

This UIPL provides additional specific guidance and implementing instructions that directly affect the collection of unpaid employer UI taxes through TOP.

4. **IRS Alert.** The IRS issued an alert by email on November 5, 2014, to all state UI agencies notifying them about changes to TOP that affect the intercept of unpaid UI employer taxes. The alert stated:

- IRS Counsel determined that:
 - Under IRC 6402(f), state UI agencies are now able to certify employer UI debt to the Bureau of Fiscal Services as eligible for TOP offset of the debtor's federal tax refund;
 - The term "person" in IRC 6402 includes all entities that are defined as a "person" under IRC 7702(a)(1), which includes an individual, trust, estate, partnership, association, company, or corporation. Corporate, partnership, and other entity UI tax debt meet the definition of a contribution due to the unemployment fund of a state under IRC 6402(f)(4); and
 - The authority for contractors to access TOP Federal Tax Information (FTI) is dependent upon the statute under which TOP FTI is received. Specifically, contractors may be granted access to UI TOP FTI under IRC 6103(d) for tax administration; however, no contractors may be granted access to UC TOP FTI received under IRC 6103(l)(10) for benefits administration.

- Required Actions (As stated by the IRS):
 - State UI agencies that participate in UI TOP offsets for tax administration under IRC 6103(d) will need to clearly describe and implement the security controls for the new stream of UI TOP FTI by the Safeguard Security Report (SSR) submission due date; either immediately before or immediately after receipt of UI tax TOP FTI;
 - State UI agencies that have not previously received any FTI, including TOP FTI, must submit an SSR to the IRS Office of Safeguards for approval prior to the initial receipt of either UI tax or UC benefit TOP FTI;
 - State UI agency SSRs should combine and describe the physical and logical controls for all data streams subject to safeguard requirements, paying special attention to clarify any differences between controls for UI tax TOP FTI and UC benefit TOP FTI;
 - State UI agencies must pay special attention to ensure that SSRs, FTI access procedures, and contracts specify that contractors may be granted access to UI tax TOP FTI associated with tax administration, but may not be granted access to UC benefit TOP FTI associated with benefits administration;
 - State UI agencies must ensure that FTI awareness training and, if appropriate, internal inspections, are completed for contractors granted access to UI tax TOP FTI associated with tax administration; and
 - State UI agencies must ensure that the IRS Office of Safeguards is notified 45 days in advance of granting a contractor access to UI tax TOP FTI.

5. **Action Requested.** States are reminded that UIPL No. 12-14 requires states to use the TOP to recover all types of UC debts that remain uncollected as of the date that is one year after the debt was determined to be due and collected. This includes uncollected UI contributions that are past due. The Department was waiting for the IRS to instruct states how to submit unpaid UI employer contribution debt to the TOP program before issuing an update to UIPL No. 02-09. This UIPL contains those instructions.

The IRS will conduct a Webinar on January 15, 2015 to instruct state UI agencies how to implement the TOP program to collect unpaid employer UI taxes. To register, please visit http://fiscal.treasury.gov/fsservices/gov/debtColl/wkshpEvents/debt_tng_topStates_WEBINAR_jan2015.htm, or call (202) 874-6810.

Some of the unique aspects of the employer tax debt collection process in TOP are:

- Contractors are permitted access to UI tax FTI, which means that states with contractors supporting their information technology will be able to participate in TOP for UI tax debt. However, the prohibition for contractor access to UI benefit FTI remains in place.
- The new debt type “UT” and the new site ID “TX” identify UI tax debt in the data file submitted to Treasury for TOP.
- States will identify UI tax debt to TOP for employer accounts that are sole proprietorships or partnerships by the SSN of the owner/partner.

- States will identify UI tax debt to TOP for employer accounts that are corporations under the Federal Taxpayer Identification Number (TIN).

As requested by the IRS alert, state UI agencies are encouraged to comply with the instructions in the IRS alert and contact the IRS Office of Safeguards at SafeguardReports@irs.gov as soon as possible.

6. **Inquiries.** Questions or concerns should be directed to the appropriate Regional Office.