

## Questions and Answers (Q&As)

### General Questions

**Q1. How do I begin the process to enroll in the Treasury Offset Program (TOP)?**

**A1.** States must submit a signed certification agreement and provide an agency profile to Treasury. Additionally, each debtor must be sent a written notice of the state's intention to collect the debt through Federal tax refund offset, giving the debtor at least 60 days to present evidence, in accordance with procedures established by the state, that all or part of the debt is not past-due or not legally enforceable.

In addition, a state must have an approved Safeguard Procedures Report (SPR) (See SPR Q&A below) which details how the Federal Tax Information (FTI) will be received and processed by the State Workforce Agency (SWA) and how the FTI will be protected from unauthorized disclosure

**Q2. What kind of Unemployment Insurance (UI) benefit overpayments can be submitted by the state to Treasury for offset?**

**A2.** There are two kinds: 1) A past-due debt for erroneous payment of unemployment compensation due to fraud; and 2) A past due debt for erroneous unemployment compensation due to the person's failure to report earnings.

**Q3. What is the typical sequence of events in the TOP process?**

**A3.** After a state submits the first file to Treasury, which includes all debt that is being submitted for recovery, a state submits weekly update files. The update files report any changes to previously submitted debts and any new debts. Treasury provides the state with a file each week that summarizes the refunds being offset. States can expect the deposits to the designated bank accounts five to eight days later. Most offset activity will occur during April and May, but some activity may occur throughout the year.

**Q4. Where does Treasury transmit TOP payments to a state?**

**A4.** For benefit overpayment TOP recoveries, the state should provide Treasury with the routing and transit number and account number of its benefit payment (disbursement) account. For UI tax TOP recoveries, the state should provide Treasury with the routing and transit number and account number of its clearing (depository) account.

**Q5. Will the state incur fees to participate in TOP?**

**A5.** Treasury will charge \$17 for each offset transaction for Fiscal Year (FY) 2011, which is deducted from the amount collected through the offset. Fees are not included on the Treasury file sent to states that summarizes TOP recoveries.

**Reporting and Validating the 227 Report  
after the TOP is Implemented**

**Q6. How will TOP recoveries be reported on the ETA 227 (OMB No. 1205-0173) report, and how will those amounts be validated, after the 227 report is revised?**

**A6.** When the ETA 227 report is next revised -- planned for late 2011 -- it will contain a new line for reporting TOP recoveries in Section C, Overpayment Reconciliation. Like other categories in the Recovery section, it will enable reporting for Fraud and Non-fraud recoveries for state UI amounts as well as Unemployment Compensation for Federal Employees (UCFE) / Unemployment Compensation for Ex-service members (UCX). At this time, the process for validating the new data items has not been decided. The validation procedure will depend on how the ETA 227 is modified, on definitive guidance from Treasury on whether detail records for TOP recoveries can be used for Data Validation (DV), and on processes for obtaining Treasury data.

As mentioned above (Q5), the FY 2011 fee is withheld from money due the unemployment fund; therefore, situations will occur where the entire debt is not satisfied through UC TOP. For example:

- A state submits a \$1,000 fraud overpayment for collection through UC TOP.
- The U.S. Treasury intercepts \$1,000 from the debtor's Federal income tax refund and deducts the UC TOP fee: \$17.
- \$983 is deposited in the state's unemployment fund.

Since nothing in Federal law explicitly addresses this situation, it is DOL's position that it is a matter of state law whether the state is required to credit the debtor with the full \$1,000 intercepted to pay the fraud overpayment. Therefore, what the state credits the debtor should be what the state reports on the ETA 227 report.

**Q7. How can TOP recoveries be reported on the ETA 227 report (OMB No. 1205-0173) before the report is revised, and how will those amounts be validated?**

**A7.** Before new cells are added to the ETA 227 report, states are instructed to use existing cells on the ETA 227 report to report TOP recoveries to ensure that (a) total recoveries reflect TOP and (b) ending balances are correct. They are to use Line 307, Other Recoveries (Fraud). This category was chosen because states now use it infrequently: (in FY 2010, only about 4% of total recoveries were reported on that line, and over 40% of the states reported no "Other" recoveries.) States will report State UI TOP recoveries in column 11 (UI Fraud) and report UCFE/X recoveries in column 12 (UCFE/UCX Fraud).

States must note both State UI and UCFE/X TOP amounts in the comments section of the report to ensure that TOP recoveries can be separated from any non-TOP recoveries reported in those cells.

The recovery of UI overpayments through TOP may be from overpayments that are over two years old and have been removed from reporting on the ETA 227. When this occurs, the amounts recovered must also be entered on line 310, Overpayment Additions, in order to reinstate the overpayment and reflect an accurate ending balance. These Overpayment Additions amounts must also be noted in the comments section.

DV is not configured to accommodate TOP transactions and, depending on Treasury policy, may never include them. As a result, when states that have begun reporting TOP recoveries on the ETA 227 using the guidance above attempt to validate Population 13, the validation counts for Other Recoveries and Additions (UI and UCFE/X, Fraud) will be lower than the reported amounts. Given the potential size of TOP recoveries, these discrepancies will probably cause the state to fail Group 13.01, *227 Recovered, Total*, and Group 13.04, *Additions, Total*.

The interim validation procedure will be as follows.

- States will be instructed to indicate the amount of TOP recoveries in the Report Validation comment field, and alert the U.S. Department of Labor (USDOL) that it needs to focus on the comments for Population 13.
- If the state is failing Population 13 for reasons other than because the validation count for Group 13.01 or Group 13.04 is less than the reported count, DOL will take no action.
- On the other hand, if Population 13 only fails because the Group 13.01 or 13.04 validation count is less than the reported count by more than the 2% criterion, the National Office will augment those groups' validation count by obtaining an independent count of TOP recoveries (total and for balances over two years old) and compare that with the state's reported counts for the groups.
  - This will involve (a) obtaining TOP recoveries for the state from Treasury for the validated period; (b) adding these to the validation count for Groups 13.01 and 13.04; and (c) comparing this augmented validation count with the reported count from the DV software for Group 13.01. If the reported amount is within  $\pm 2\%$  of the augmented validation count, the group passes.
  - If the state passes, change the state's score from Fail to Pass in the UI Database (UIDB) so that it receives credit for validating Population 13 successfully.

**Immediate Deposit Rule**

**Q8. Under TOP, states may recover penalty and interest (P&I) on overpayments. If a state recovers P&I using TOP, should the monies recovered be deposited in the state's account in the unemployment trust fund (UTF), or in the state's clearing account?**

**A8.** We recommend that recoveries be deposited into the state's clearing account. If the monies recovered include P&I, and the state instructs Treasury to deposit it into the state's account in the UTF, the withdrawal requirements of Sections 3304(a)(4), FUTA, and 303(a)(5), SSA, would apply. Therefore the monies could not be withdrawn for any reason except the payment of unemployment compensation. Placing the recoveries into the state's clearing account permits the state to retrieve P&I before the rest of the recoveries are sent to UTF.

If the state law requires that P&I monies be deposited in the UTF there would be no issue. However, if the state law provides for P&I monies to be deposited in an account outside the fund, and used for any purpose other than the payment of compensation, the P&I monies recovered could not be withdrawn for those purposes as they would not have been erroneously paid into the fund. Because monies in the unemployment fund may be used only for the payment of compensation or for the refund of sums erroneously paid into the fund, it is not available for any other use.

**UI Tax**

**Q9. What kind of UI employer tax debts can be submitted for offset?**

**A9.** States may submit contributions due to the unemployment fund of a state for which the state has determined the person to be liable and which remain uncollected, along with any penalties and interest on such debt.

**Q10. Can UI employer debts attributable to a corporation be submitted for offset?**

**A10.** No. The state must certify the UI tax debt is attributable to an individual. Since the TOP uses the U.S. Treasury's Federal income tax refund file for individuals, corporate UI tax debt would not be eligible for offset under the TOP.

**Q11. How do I report UI employer tax debts recovered by TOP?**

**A11.** States should report UI tax TOP recoveries on line 11 in columns C and D of the ETA 2112 report. Additionally, states should provide a comment that states the amount of line 11 that represents TOP UI employer tax recoveries

### **UI Benefits Reporting**

**Q12. How do I report UI benefit overpayments recovered by TOP on the ETA 2112 report (OMB No. 1205-0154)?**

**A12.** States should report benefit overpayments recovered by TOP in columns C and F, line 31 of the ETA 2112 report.

### **Safeguarding Requirements**

**Q13. What is the Safeguard Procedures Report (SPR)?**

**A13.** Prior to receiving Federal Tax Information (FTI), the state must have an approved *Safeguard Procedures Report* (SPR) which details how the FTI will be received and processed by the SWA and how the FTI will be protected from unauthorized disclosure.

- State agencies with a current SPR must submit an addendum to their existing SPR detailing the handling of the new data set within the agency.
- State agencies without a current SPR must submit a new SPR.
- Generally, Safeguards takes approximately 60 days to complete the analysis of an SPR.
- Specific UC TOP SPR templates have been created to assist the SWA agencies in completing the SPR (new or addendum)
- The Safeguard Procedures Report can be downloaded from the IRS site at:  
[http://www.irs.gov/pub/irs-utl/irs\\_safeguards\\_spr\\_template.doc](http://www.irs.gov/pub/irs-utl/irs_safeguards_spr_template.doc)

**Q14. What restrictions apply with regard to the SWA participating in the UC TOP?**

**A14.** The restrictions of IRC 6103(l)(10) apply which means the SWA participating in UC TOP may not share Federal tax information (FTI) received with the refund offset payment with contractors, with the exception of agents of the SWA who provide technological support to the UI Interstate Connection (ICON) Network.

**Q15. Are there any reporting requirements associated with UC TOP?**

**A15.** Yes; once the SWA has submitted the Safeguard Procedures Report, thereafter, annually, the SWA must submit an annual report called the Safeguard Activity Report (SAR) on June 30, covering activities during the processing period of June 1 to May 31.

The Safeguard Activity Report may be downloaded from the IRS site at:  
[http://www.irs.gov/pub/irs-utl/irs\\_safeguards\\_sar\\_template.doc](http://www.irs.gov/pub/irs-utl/irs_safeguards_sar_template.doc)

**Q16. Are there any audit requirements associated with UC TOP?**

**A16.** Yes; a SWA is subject to an on-site safeguard review every three years. This review is conducted by the IRS Office of Safeguards to ensure that the agency has appropriately implemented the safeguard controls of IRC 6103 and Publication 1075 to protect the Federal tax information in the agency's possession and control.

**Q17. How may a SWA contact a Safeguard point of contact?**

**A17.** Safeguard can be contacted via email at [safeguard\\_reports@irs.gov](mailto:safeguard_reports@irs.gov)