

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION Immediate Deposit and Withdrawal Standards
	CORRESPONDENCE SYMBOL OWS/DL
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 9-08

TO: STATE WORKFORCE AGENCIES

FROM: DOUGLAS F. SMALL 
 Deputy Assistant Secretary

SUBJECT: Immediate Deposit and Withdrawal Standards – Intercept of Refunds of Erroneous Employer Contributions

1. Purpose. To provide guidance regarding the Department of Labor's (Department's) interpretation of Federal law regarding the intercept of refunds of erroneous employer contributions to offset other employer liabilities to the state.
2. References. Sections 3304(a)(4), and 3306(h) of the Federal Unemployment Tax Act (FUTA); Section 303(a)(5) of the Social Security Act (SSA); Unemployment Insurance Program Letter (UIPL) No. 45-89.
3. Background. Section 3304(a)(4), FUTA, requires, as a condition of employers in a state receiving credit against the Federal unemployment tax, that:

all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for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 [Emphasis added.]

The same withdrawal standard is found in Section 303(a)(5), SSA, as a condition for a state to receive administrative grants.

Recently, the question has arisen whether refunds of erroneously paid employer contributions may be intercepted to pay liabilities the employer owes the state rather than directly refunding the employer. Many state laws currently permit intercept of state income tax refunds or lottery winnings to pay other liabilities owed the state. This UIPL is issued to inform states of the Department's interpretation of Federal law requirements.

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4. Intercept of Refunds. Federal law authorizes the state unemployment compensation (UC) agency to “refund” the amounts erroneously paid by employers into the state unemployment fund. Federal law does not specify that the refund must be made directly to the employer. As a result, the state UC agency may intercept the refund and apply it to obligations the employer may owe the state.

The Department notes that permitting the UC program to participate in state-wide intercept programs may enhance the UC fund if the funds intercepted by the state through other sources are permitted to be used to satisfy past due employer contributions to the unemployment fund.

Unlike refunds of amounts erroneously paid by employers, Federal law requires the payment of compensation to the individual whose unemployment is being compensated. Section 3306(h), FUTA, defines compensation to mean “cash benefits payable to individuals with respect to their unemployment.” (Emphasis added.) As explained in UIPL 45-89, under the withdrawal standard:

all unemployment compensation must be paid directly, as a matter of right, to the individual whose unemployment is being compensated, except for some narrowly limited statutory exceptions. ... To deduct compensation to pay debts, or to otherwise provide for payment to someone other than the claimant personally, would defeat the intent and purpose of the program.

Thus, Federal law requires a state to limit withdrawals from its unemployment fund for compensation paid directly to the individual. However, there are a number of statutory exceptions, including one permitting withdrawals to pay refunds of sums erroneously paid into the fund. This exception for refunds does not require direct payment.

5. Action. State administrators should distribute this advisory to appropriate staff.
6. Inquiries. Questions should be addressed to your Regional Office.