

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Provision Affecting Federal-State UCP
	CORRESPONDENCE SYMBOL OUI
	DATE March 8, 2011

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 11-11
TO: STATE WORKFORCE AGENCIES
FROM: JANE OATES *Jane Oates*
 Assistant Secretary
SUBJECT: 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

1. Purpose. To advise state workforce agencies of the provisions of 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, that affect the federal-state unemployment compensation (UC) program.

2. References. Sections 801 and 802 of the Claims Resolution Act (P.L. 111-291); Section 503 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312); Section 6402(f) of the Internal Revenue Code (IRC), 26 U.S.C. 6402(f); Section 453A(b) of the Social Security Act (SSA), 42 U.S.C. 653a; and Unemployment Insurance Program Letter (UIPL) No. 02-09 and UIPL No. 02-09, Change 1.

3. Summary of Provisions. On December 8, 2010, the President signed into law the Claims Resolution Act of 2010, P.L. 111-291, which contains two sections affecting the UC program. On December 17, 2010, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, which contained a section making a technical change to section 801 of P.L. 111-291. A copy of sections 801 and 802 of P.L. 111-291 and section 503 of P.L. 111-312 is attached; therefore reference to particular provisions of those sections are omitted.

Treasury Offset Program

Section 6402(f) of the IRC permits states to recover certain UC debts from federal income tax refunds under the Treasury Offset Program (TOP) operated by the United States Department of the Treasury (Treasury). Section 801 of the Claims Resolution Act amended Section 6402(f), IRC as follows.

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- Expanded the definition of “covered unemployment compensation debt” concerning benefit overpayments to include erroneous payments due to “the person’s failure to report earnings.” Therefore, 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. These are the only two types of overpayments of UC that may be collected using the TOP. States may not collect overpayments due to any other reason, such as appeals reversals of separation issues or other adjudications.
- Expanded the definition of “covered unemployment compensation debt” concerning uncollected contributions by eliminating the restriction to persons liable “due to fraud.” Thus, 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.
- Eliminated the requirement that an offset may be made under the TOP for a covered UC debt only if the individual is filing a federal income tax return from the state seeking the offset. States may now seek offset against a federal income tax refund, regardless of the state from which the individual is filing the return.
- Eliminated the requirement that covered UC debt remain uncollected for not more than 10 years. States may now seek to intercept federal income tax refunds for any covered UC debt, regardless of how long it has been uncollected, consistent with state law provisions concerning when a debt is collectable.
- Eliminated the requirement that the state notify “by certified mail with return receipt” persons owing covered UC debt that the state proposes to take action. States are still required to notify the person owing the covered UC debt that the state proposes to take action to intercept the federal income tax refund, but may do so using the method provided for in state law. The enactment did not change any of the other due process requirements states are required to follow in order to collect the debt.
- Eliminated the expiration of authority to recover covered UC debts from federal income tax refunds on September 30, 2018. There is no expiration date in current law.

Section 503 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 made a technical change to correct a drafting error in the Claims Resolution Act.

In previous guidance concerning use of the TOP to collect covered UC debt, the U.S. Department of Labor noted that Treasury would issue regulations prior to implementation. On January 28, 2011, Treasury published the interim rule in the Federal Register at 76 Fed. Reg. 5070. The rule may be accessed at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-28/pdf/2011-1697.pdf> .

States that anticipate using the TOP to collect covered UC debts should review their current law to determine what changes, if any, to state laws, rules, or other administrative processes are necessary in light of the amendments made by Section 801 of the Claims Resolution Act as amended. In any case, the procedures must be consistent with the provisions of the published interim rule. States may submit covered UC debts for offset as long as they have met two key requirements – (1) signed certification agreement with Treasury/Financial Management Service, which includes an Agency Profile form and (2) completion and acceptance of the Safeguards Procedures Report (SPR) with the Internal Revenue Service (IRS). These requirements are discussed in UIPL 2-09, Change 1. The IRS sends a notification to Treasury when the SPR requirements are met by a state. On February 11, 2011, Treasury issued TOP Technical Bulletin Number UIC 11-02. The Bulletin includes a copy of the certification agreement and the Creditor Agency Profile form for use by states when implementing collections by TOP. It also contains information regarding the fees Treasury will charge for Fiscal Year 2011.

Finally, questions have been raised as to which UC programs the TOP applies. Section 6402(f) of the IRC refers to “covered unemployment compensation debt.” Because it does not limit the definition of “unemployment compensation,” 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. We note, however, that just like any other recovered overpayments of UC, the recovered monies must be returned to the appropriate fund.

National Directory of New Hires

Section 453A, SSA, permits states to access the National Directory of New Hires (NDNH) for administration of the UC program. Section 802 of the Claims Resolution Act amended Section 453A(b)(1)(A), SSA, to require employers to furnish “the date services for remuneration were first performed by the employee.” Therefore, employers must now submit reports to state directories of new hires that contain the name, address, social security number, and first day of work for each newly hired employee.

The NDNH is operated by the Department of Health and Human Services (HHS). Therefore, any guidance concerning new hire reports, including when they become effective, will be issued by HHS.

4. Action Requested. State administrators should distribute this advisory to appropriate staff.

5. Inquiries. Please direct inquiries to the appropriate Regional Office.

6. Attachment. Sections 801 and 802 of P.L. 111-291

TEXT OF SECTIONS 801 AND 802 OF P.L. 111-291

TITLE VIII—GENERAL PROVISIONS
 Subtitle A—Unemployment Compensation
 Program Integrity

SEC. 801. COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE
 DEBTS.

(a) UNEMPLOYMENT COMPENSATION DEBTS.—Section 6402(f) of the Internal Revenue Code of 1986 is amended—

(1) in the heading, by striking “RESULTING FROM FRAUD”;

(2) by striking paragraphs (3) and (8) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively;

(3) in paragraph (3), as so redesignated—

(A) in subparagraph (A), by striking “by certified mail with return receipt”;

(B) in subparagraph (B), by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”;

(C) in subparagraph (C), by striking “due to fraud” and inserting “is not a covered unemployment compensation debt”; and

(4) in paragraph (4), as so redesignated—

(A) in subparagraph (A)—

(i) by inserting “or the person’s failure to report earnings” after “due to fraud”; and

(ii) by striking “for not more than 10 years”; and

(B) in subparagraph (B)—

(i) by striking “due to fraud”; and

(ii) by striking “for not more than 10 years”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of the enactment of this Act.

SEC. 802. REPORTING OF FIRST DAY OF EARNINGS TO DIRECTORY
 OF NEW HIRES.

(a) ADDITION OF REQUIREMENT.—Section 453A(b)(1)(A) of the Social Security Act (42 U.S.C. 653a(b)(1)(A)) is amended by inserting “the date services for remuneration were first performed by the employee,” after “of the employee,”.

(b) CONFORMING AMENDMENT REGARDING REPORTING FORMAT AND METHOD.—Section 453A(c) of the Social Security Act (42 U.S.C. 653a(c)) is amended by inserting “, to the extent practicable,” after “Each report required by subsection (b) shall”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall take effect 6 months after the date of the enactment of this Act.

(2) COMPLIANCE TRANSITION PERIOD.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part D of title IV of the Social Security Act to meet the additional requirements imposed by the amendment made by subsection (a), the plan shall not be regarded as failing to meet such requirements before the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of such amendment. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

TEXT OF SECTION 503 OF P.L. 111-312

SEC. 503. TECHNICAL AMENDMENT RELATING TO COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS.

(a) IN GENERAL.—Section 6402(f)(3)(C), as amended by section 801 of the Claims Resolution Act of 2010, is amended by striking “is not a covered unemployment compensation debt” and inserting “is a covered unemployment compensation debt”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 801 of the Claims Resolution Act of 2010.