

<b>Employment and Training Administration</b> <b>Advisory System</b> <b>U.S. Department of Labor</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> UC TOP
	<b>CORRESPONDENCE SYMBOL</b> DL/DPM
	<b>DATE</b> May 26, 2011

**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-09,  
Change 2

**TO:** STATE WORKFORCE AGENCIES

**FROM:** JANE OATES  
Assistant Secretary

*Jane Oates*

**SUBJECT:** Recovery of Unemployment Compensation Debts Due to Fraud or to Working while Claiming Benefits from Federal Income Tax Refunds

1. **Purpose.** To inform states of updates to the procedures to implement a program to recover unemployment compensation (UC) debt under the "Treasury Offset Program" (TOP) and to provide responses to frequently asked questions about the implementation process.
2. **References.** Public Law No. 110-328; the "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;" and 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;" UIP L No. 02-09, Change 1, "Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds;" UIP L 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 and UIP L 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".

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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3. **Steps to Implement TOP for UC Debts.** The regulations for the offset of tax refund payments to collect UC debts owed to states have been approved and were published on January 28, 2011, in the Federal Register (<http://www.gpo.gov/fdsys/pkg/FR-2011-01-28/pdf/2011-1697.pdf>).

On February 14, 2011, the U.S. Department of the Treasury's Financial Management Service (FMS) started accepting referrals of UC debts from the states and the Federal tax offset processing was initiated.

However, prior to referring UC debts to TOP, FMS must receive:

- A formal communication from the IRS regarding the approval of the state's Safeguard Procedures Report,
- A signed Debt Certification Agreement (Attachment 1) from the state, and
- An Agency Profile (Attachment 2) form from the state.

These steps are discussed in more detail below.

4. **Safeguard Procedure Report (SPR).** UC TOP is authorized under IRC 6402 and 6103(l)(10), and agencies receiving refund offset payments and the associated data are subject to the safeguarding requirements of IRC 6103(p)(4) and Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*.

The Safeguards Program and staff are responsible for ensuring that Federal, state and local agencies receiving Federal tax information (FTI) protect it as if the information remained in IRS' hands. Under IRC 6103(l)(10), disclosure of FTI (REFUND OFFSET DATA) to contractors is not permitted.

These agencies receiving FTI must protect the confidentiality of return information and are periodically reviewed by Safeguards personnel to ensure they meet the safeguarding requirements of IRC 6103(p)(4). These requirements include employee awareness programs, proper disposal, secure storage, and computer security among others.

Information on the IRS SPR process may be obtained from the IRS Safeguard Program web site: <http://www.irs.gov/businesses/small/article/0,,id=177651,00.html>

Agencies shall submit their SPR on the template developed by the IRS Office of Safeguards. The most current template may be obtained from IRS.GOV keyword "Safeguards" or requested by emailing [SafeguardReports@irs.gov](mailto:SafeguardReports@irs.gov). In addition, the SPR template may be obtained from the IRS Safeguard Program web site:

[http://www.irs.gov/pub/irs-utl/irs\\_safeguards\\_spr\\_template.doc](http://www.irs.gov/pub/irs-utl/irs_safeguards_spr_template.doc)

#### **SPR Submission Guidance**

- The SPR must be accompanied by a letter on the agency's letterhead signed by the head of the agency or delegate, and dated.

- Files must be sent encrypted via IRS approved encryption techniques. E-mail encryption procedures using the WinZip Utility may be obtained from the IRS Safeguards Program web site at:  
<http://www.irs.gov/businesses/small/article/0,,id=177419,00.html>
- Once the WinZip file is submitted to the IRS Office of Safeguards mailbox, ensure you receive an automated confirmation e-mail. If an automated response is not sent back, please e-mail the IRS Office of Safeguards mailbox without attachments and request assistance.
- Please note that the IRS Office of Safeguards does not accept hard copy submissions.

5. **Debt Certification Agreement.** States must submit a signed certification agreement to TOP prior to referral of their debts to TOP. This certification agreement will need to be renewed annually. The certification agreement (Attachment 1) will be valid for Calendar Year (CY) 2011.

Please complete, sign, and mail the original agreement to:

Financial Management Service  
Debt Management Services  
Attn: Sara Garris  
401 14<sup>th</sup> Street, SW, Room 229C  
Washington, D.C. 20227

6. **Agency Profile Validation.** All states are required to complete and provide an agency profile prior to referring debts to TOP. The agency profile should be reviewed annually and updated as required. This information is used to print the TOP Notice of Offset letter to inform debtors of the offset action. Debtors will not be able to contact their state if the contact information in the TOP system is not correct. If changes are necessary, please complete the Agency Profile form (Attachment 2) and mail to:

Financial Management Service  
Debt Management Services  
Attn: Sara Garris  
401 14<sup>th</sup> Street, SW, Room 229C  
Washington, D.C. 20227

7. **Policy on Scheduling Testing.** FMS Debt Management Services (DMS) has instituted a policy for state agencies making requests to DMS to conduct testing and for new states that will be joining the TOP in the future. All requests for testing with the DMS Information Technology (IT) Technical Support Team will be scheduled according to the following policy.

- Requests for testing should be submitted in writing via email to the agency's DMS liaisons. (See liaisons below.) The state agency must provide a clear description of the type of testing needed and the name, telephone number, and email address of the agency's Point of Contact (POC). The DMS Liaison will acknowledge receipt of the request and convey acceptance of the testing and start date. Once the request for testing has been accepted, a member of the DMS IT Technical Support Team will communicate directly with the agency's POC.
- Requests for conducting testing, i.e., test matches, application integration and data transmission, should be submitted 45 days prior to the start of the test. It is possible that the testing may begin immediately, depending on DMS' work load but advance notice is requested so scheduling may be prioritized. (The advance notice does not include the timeframe for conducting the test.)
- All testing will be conducted in a test environment.

Requests for conducting testing should be sent to: Becky Park at [becky.park@fms.treas.gov](mailto:becky.park@fms.treas.gov) and copy Sheila Moss at [sheila.moss@fms.treas.gov](mailto:sheila.moss@fms.treas.gov).

8. **Fiscal Year (FY) 2011 Fees.** For unemployment compensation debts, the TOP fee will be as follows:

Tax Refund Offset \$17.00 for FY 2011.

Please note that the fee may change on a yearly basis.

9. **Action Requested.** State administrators should distribute this advisory to appropriate staff.
10. **Inquiries.** Inquiries regarding TOP should be addressed as follows (these are not toll-free numbers):

For Technical Assistance, Testing, Security, Agency Profiles, and Implementation, please contact:

Debt Program Support Branch  
Horace Tate  
(202) 874-7081

For Agency Training and Program Support, please contact:

Debt Program Relations Branch  
Tom Kobielus  
(202) 874-7359

For TOP Technical Bulletins - (202) 874-3810.

Please contact Sheila Moss at 202-874-6937 or Becky Park at 202-874-9451 if you have any additional questions.

Note: Notices sent out by FMS refer individual debtor questions to the Help Desk at 1-800-304-3107 (this is a toll-free number).

11. **Attachments.**

Attachment #1: Treasury Offset Program, "Agreement to Certify Debts Electronically for Federal Tax Refund Offset to Collect," Unemployment Compensation Debts Owed to States

Attachment A:  
Treasury Offset Program Certification Terminology

Attachment #2: Creditor Agency Profile Input Form

Attachment #3: Question and Answers (Q&As)

**TREASURY OFFSET PROGRAM**  
**Agreement to Certify Debts Electronically for**  
**Federal Tax Refund Offset to Collect**  
**Unemployment Compensation Debts Owed to States**

This Agreement to Certify Debts Electronically (Certification Agreement) is submitted by:

State Agency:

Agency ID:

Date of Certification Agreement:

The State Agency agrees that:

I. This Certification Agreement covers all debts, including updates, changes, and modifications (Debts) submitted on or after the date of this Certification Agreement by State Agency to the Financial Management Service (FMS), a bureau of the U.S. Department of the Treasury, for collection by the offset of Federal tax refunds through the Treasury Offset Program (TOP), pursuant to 26 U.S.C. 6402(f) and 31 CFR 285.8;

II. Debts are transmitted by State Agency to TOP for collection by offset via Electronic Transmission of "Add Records" or "Update Records," as described in Attachment A. Each time the State Agency submits a Debt via an Add Record or Update Record, the State Agency is certifying the Debt;

III. Any person who submits Debts via an Add Record or Update Record has authority to certify the Debts on behalf of the head of the State Agency, and the State Agency will provide a copy of this Certification Agreement to any such person; and,

IV. By submitting Debts via an Add Record or Update Record, the person submitting such Debts is certifying to the U.S. Department of the Treasury, under penalty of perjury, pursuant to 26 U.S.C. § 6402(f), 31 CFR 285.8 and 28 U.S.C. § 1746, that to the best of his or her knowledge and belief, the following is true and correct:

1. Unemployment Compensation Debts. The Debts are state-covered unemployment compensation (UC) debt as defined at 26 U.S.C. §6402(f)(5) and 31 CFR 285.8, and guidance from the U.S. Department of Labor.

2. Valid Debts. The Debts are past-due, valid, and legally enforceable in the amounts stated. State Agency will properly credit collections (other than TOP collections) to the delinquent debtors' accounts and notify FMS of any change in the amount, validity or legal enforceability of any Debt.

3. No Bar to Collection By Offset. The Debts are not subject to any circumstances that legally preclude or bar collection by offset. The Debts are delinquent. State Agency's records do not show that any debtor owing a Debt has filed for bankruptcy protection; alternatively, State Agency can clearly establish that any automatic stay has been lifted or is no longer in effect.

4. Due Process Compliance For Federal Tax Refund Offset.

A. State Agency has complied with all of the provisions of 26 U.S.C. § 6402(f)(3), 31 CFR 285.8, as well as any Federal and State laws, regulations and policies applicable to the collection of State UC debt by the offset of Federal tax refunds.

B. Prior to the Electronic Transmission of any Debt, State Agency has sent to each debtor a written notice of State Agency'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.

C. State Agency has considered any evidence presented by the debtor and determined that the amount of the Debt is past due and legally enforceable. There are no pending appeals of such determination.

5. Reasonable Efforts. State Agency has made reasonable efforts to obtain payment of the Debt, including, at a minimum, that the State Agency has demanded payment and provided the debtor with the notice and opportunities described in paragraphs 4.B. and C.

6. Safeguards. State Agency will safeguard all return information, as defined at 26 U.S.C. § 6103(b)(2), received from FMS under the TOP in accordance with 26 U.S.C. § 6103(p)(4) and comply with the Federal safeguard requirements set forth in Internal Revenue Service (IRS) Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*. Access to return information must be restricted to properly authorized individuals. By law, State Agency contractors may not have access to return information obtained from TOP for any purpose.

**CERTIFICATION:** I certify that I have been delegated authority to execute this Certification Agreement on behalf of the head of my agency.

\_\_\_\_\_  
[Signature of Certifying Official]

Print Name:

Title:

**ATTACHMENT A**  
**TREASURY OFFSET PROGRAM**  
**CERTIFICATION TERMINOLOGY**  
**Federal Tax Refund Offset to Collect Unemployment Compensation Debts**

For purposes of the foregoing Certification Agreement, the following describes how state agencies submit debts via Electronic Transmission of computer records to the Treasury Offset Program (TOP):

1. Electronic Transmission. Any transmission from state agencies to TOP via any form of electronic media (including, but not limited to, tapes, diskettes, and on-line access) is an Electronic Transmission.
2. Add Records. Add Records are electronic records which state agencies use to add new debts to TOP. Add Records include:
  - (a) For a particular debt, a Record Type 1 together with a Record Type 2 with an A in the Action Field of each of those records (Record Types 1 and 2 contain information about the debt, including debtor name, tax identification number, etc.);
  - (b) Records sent to TOP in the tax refund offset (TRO) Annual Debt Certification file format; and
  - (c) Transmissions via the Debtor Detail screen of the on-line TOP Client function (TOP Client) which add new debts to TOP.
3. Update Records. Update Records are electronic records that creditor agencies use to update, change or modify information about debts previously transmitted to TOP by creditor agencies. Update Records include:
  - (a) For a particular debt, a Record Type 1 with a U, I, or Y in the Action Field;
  - (b) For a particular debt, a Record Type 6 with an A or D in the Action Field;
  - (c) Records sent to TOP in the TRO Weekly Update file format; and
  - (d) Transmissions via the Debtor Detail screen of the TOP Client that update, change or modify information about debts in TOP.



## Creditor Agency Profile Input Form

The instructions below apply to the Creditor Agency Profile Input Form, which follows.

*Note: If more than one Creditor Agency Site is participating in TOP, duplicate this form and complete one per Agency Site.*

### SECTION A

1. Indicate if this profile is for the Parent or Agency Site.
2. Indicate if this is a New Profile or Update of an Existing Profile.
3. Provide Creditor Agency Name.
4. Provide address, city, state and zip code for Creditor Agency.
5. Provide the agency location code for the Creditor Agency.

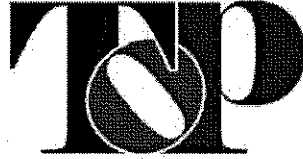
### SECTION B

1. Provide the name, telephone number, and facsimile number of the person for FMS to contact for information regarding the Treasury Offset Program.
2. Indicate if the Creditor Agency is allowed to reduce the debt balances to zero.
3. Indicate if the Creditor Agency will pay levy/offset fees to FMS or if the Creditor Agency will pass these fees to its debtors. For IRS Tax Levy, levy fees are required by law to be paid by the Creditor Agency.
4. The Debt Match Bypass Indicator designates which payments are not eligible for levy or offset against all debts for that Agency. For IRS Tax Levy, a Debt Match Bypass Indicator for Tax Refund payments will be set at the Agency and Agency Site levels. The Debt Load Bypass Indicator designates which Payment Sources to bypass; i.e., which debt bypass indicators to set (up to ten), for each debt that is added for the Creditor Agency. It is the equivalent of the Creditor Agency submitting a Record Type 6 to avoid one or more Payment Source codes.
5. Provide the Debt Type that the Creditor Agency is referring to TOP for collection by offset/levy. The Creditor Agency must ensure that the debt types provided are consistent with TOP approved debt types. The Expiration Period is determined based on the Creditor Agency's statutes, regulations, and policies. Federal debts generally cannot be collected by administrative offset after ten years; however, there is no statute of limitation on IRS Tax Levy debts.

### SECTION C – Information is used on “Notification of Offset or Levy” Letters

1. Provide the name, telephone number, and facsimile number of the person whom debtors should contact (Debtor Contact).
2. Provide the telephone number for debtors to use when calling the Agency Debtor Contact from within the same state as this Agency Site location.
3. Provide the telephone number for debtors to use when calling the Agency Debtor Contact from outside the same state as this Agency Site location.

TREASURY OFFSET PROGRAM

**Creditor****Agency Profile Input Form**

<b>Section A – Agency Information</b> To be completed by all agencies.		
1. Check One: <input type="checkbox"/> Parent Site <input type="checkbox"/> Agency Site		2. Check One: <input type="checkbox"/> New Profile <input type="checkbox"/> Update Existing Profile
3. Agency Name:		Date of Request:
4a. Street Address:		
4b. City:	4c. State:	4d. Zip Code:
5. Agency Location Code:		
<b>Section B – Profile Information</b> To be completed by all agencies.		
1a. Creditor Agency Contact:		
1b. Phone: (    ) -    -		1c. Fax: (    ) -    -
2. Agency to reduce debt balances to zero: <input type="checkbox"/> Yes <input type="checkbox"/> No		
3. Levy/Offset fees to be paid by: <input type="checkbox"/> Creditor Agency <input type="checkbox"/> Debtors		
4. Indicate below the payment types (Debt Match Bypass Indicators) against which debts should never be offset.		
_____		
Indicate below the payment types (Debt Load Bypass Indicators) against which debts will not be offset until a Record Type 6 is submitted.		
_____		
5. Debt Type	Begin Date	Expiration Period
_____	_____	_____
_____	_____	_____
_____	_____	_____
<b>Section C – Contact Information</b> To be completed by all agencies.		
1a. Debtor Contact:		
1b. Phone: (    ) -    -		1c. Fax: (    ) -    -
2. In-State Debtor Contact Phone: (    ) -    - Check if Phone is Toll Free <input type="checkbox"/>		
3. Out-of-State Debtor Contact Phone: (    ) -    - Check if Phone is Toll Free <input type="checkbox"/>		
<b>For FMS Use Only</b>		
Date Received:	Agency ID:	
Date Entered:	Site ID:	
Initials:		

## 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)