Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	**CLASSIFICATION** UC TOP
	CORRESPONDENCE SYMBOL DL/DPM
	DATE June 18, 2010

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-09, Change 1

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES
Assistant Secretary

SUBJECT: Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds

1. Purpose. To (1) inform states of amendments to the procedures to implement a program to recover unemployment compensation (UC) debt under the "Treasury Offset Program" (TOP) as well as provide the most current and accurate information on those procedures; and (2) reiterate the due process requirement for establishing that a debt is recoverable using the TOP.

2. References. Unemployment Insurance Program Letter (UIPL) No. 02-09, "Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds" 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); and Unemployment Insurance Program Letter (UIPL) No. 22-96 (61 Fed. Reg. 27101 (May 30, 1996)).

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 the states to recover certain UC debts due to fraud from Federal income tax refunds under the TOP operated by the United States Department of the Treasury (Treasury). It also established some "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 UC TOP. However, recent discussions with Treasury require changes to procedures for the State Workforce Agencies (SWAs) on the

RESCISSIONS	EXPIRATION DATE
None	Continuing

implementation of the UC TOP program. Therefore, this change supersedes and replaces Section 5 of UIPL No. 02-09.

4. Due Process Requirements. As described above, before using UC TOP to collect a covered UC debt, a state is required to determine that the debt is legally enforceable and due to fraud. The state must notify the debtor by certified mail return receipt that it plans to recover the debt through the offset of any Federal tax refund. The notice must give the debtor at least 60 days to present evidence that all or part of the liability is either not legally enforceable or due to fraud. The state must consider any evidence presented and determine that the amount of the debt is legally enforceable and due to fraud. The state must also satisfy any other conditions that Treasury imposes.

   This required opportunity to present evidence is not a review of the initial determination establishing the overpayment or other liability. Instead, it is intended to assure that both the claimant and the state agree on the current amount of the debt and that it remains legally collectible under state law. It provides the UC debtor an opportunity to demonstrate that the amount is not subject to recovery through UC TOP, thereby minimizing erroneous intercepts. If, because of the review, it is determined that the debt is not legally enforceable or due to fraud, UC TOP may not be used.

   DOL does not believe that this notification and review process would require any changes to state law. The UC TOP legislation does not require the state to amend its initial determination nor does it require an appealable determination. It is only aimed at assuring that any debt referred to UC TOP is accurate.

5. TOP System Access Requirements. To submit UC debts to the Treasury's TOP system, the SWA will follow the steps outlined below:

   - Certification Agreement - will be executed annually and submitted to Treasury's Financial Management Services (FMS). Under 31 U.S.C. 3716(a), the head of each SWA (Creditor Agency) must also certify each debt it submits to TOP. Specifically, a state agency must certify to FMS that the debt is past due, legally enforceable, and that the SWA has provided the debtor with a notice and an opportunity for a review in accordance with the provisions of 31 U.S.C. 3716(a). The Certification Agreement will be executed annually. However, once certified, a debt will remain certified for the life of the debt.

     The Certification Agreement is pending FMS regulation changes addressing the UC TOP program. Once the FMS regulation is complete, the Certification Agreement will be sent to the SWAs in a supplemental UIPL.

   - Agency Profile Input Form – is to be submitted along with the certification agreement. Agency Profile data, a primary control for the TOP process, defines the

SWA's rules (special debt file processing instructions) for TOP processing. Each SWA must specify these rules on the Agency Profile Input Form. The purpose of the form is to provide FMS information that FMS can include in the notification letter to the debtor regarding the offset. The SWA will be the Creditor Agency. The Creditor Agency Profile Input Form is available on the UC TOP CD, which is provided under separate cover.

Only FMS can add Agency Profile information records, as requested, on completed Agency Profile Input Forms. States must supply FMS with updates to their profiles as necessary. Authorized SWA personnel may view and update certain fields on the Agency Profiles depending on their access level.

- Security Access Request Form - is used to provide creditor users with access to the TOP System via the TOP Web Client. Depending on the user's security classification, these may include adding, querying, and updating delinquent debtor information, correcting errors, and printing reports. All state users requiring access to the TOP Web Client software must complete the form. The Security Access Request Form is available on the UC TOP CD, which is provided under separate cover.

State agencies may submit eligible UC debts to Treasury's TOP system by entering the delinquent debtor records into the TOP system using the on-line TOP Windows interface (Web client) or by providing a batch file of debt information. For detailed information, refer to the CD provided with this UIPL under separate cover, which includes the "*Official Federal Agency Guide to the Treasury Offset Program.*"

The two types of data transmissions are described below:

1. Batch.

   There are three (3) methods to transfer Batch files:

   (1) "Connect:Direct" - direct network connection from the SWA to the Treasury already exists in most states. Each Unemployment Insurance (UI) SWA will need to determine the location of this network connection and whether the UI SWA has necessary access to use this network.

   (2) Frame Relay network via Sprint.

   (3) Connect:Enterprise - free software that Treasury provides which permits a file transfer protocol (FTP) connection.

   The Batch process comprises four (4) record types:

   (1) Record Type 1 (Debt / Debtor Information).

   (2) Record Type 2 (Debtor Address Information).

   (3) Record Type 4 (Alias Name Information).

   (4) Record Type 6 (Bypass Indicators / Overrides).

For more information, please see "*Treasury Offset Program Enhanced Record Layouts Ver 3.2 with Definitions, Error Codes and Layout Mapping*" in the UC TOP CD, provided under separate cover.

2. TOP Web Client. The U.S. Treasury supplies the Web Client software. It uses two-factor authentication (SecurID Card and Passcode). The user will access the information via the Internet. SWA users will have to complete and submit the TOP - Security Access Request Form for use of the Web client interface. For more information, please see "*The Online Client Agency User Guide, Web Version Release 1.0*" in the UC TOP CD, provided under separate cover.

6. Connectivity Testing. Even though the SWA may not implement UC TOP prior to FMS regulation completion, the SWAs may work with FMS to test network connectivity as well as test simulated data transfers with FMS. Please see the Debt Program Support Branch contact information below regarding UC TOP testing.

7. Termination Date. The authority to recover covered UC debt from Federal income tax refunds expires on September 30, 2018, which is 10 years after the date of enactment of Public Law No. 110-328.

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

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

   Inquiries regarding TOP should be addressed as follows (these are not toll-free numbers):

   - Debt Program Support Branch - Technical Assistance, Testing, Security, Agency Profiles, Implementation - Horace Tate, (202) 874-7081
   - Debt Program Relations Branch - Agency Training, Program Support - Tom Kobielus, (202) 874-7359
   - TOP Technical Bulletins - (202) 874-3810

   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).

10. Attachment(s).

    - UC TOP CD under separate cover

ATTACHMENT

UC TOP COMPACT DISK (CD) [under separate cover]

The contents of the UC TOP CD include:

- **Creditor Agency Profile Input Form**
  Filename: TOP Creditor Agency Profile Form.doc

- **TOP Enhanced Record Layouts Ver 3.2 with Definitions, Error Codes and Layout Mapping**
  Filename: TOP Enhanced Record Layouts V3.2.doc

- **The Official Federal Agency Guide to the Treasury Offset Program**
  Filename: TOP Federal Agency Guide.pdf

- **The Online Client Agency User Guide, *Web Version Release 1.0***
  Filename: TOP Online Client Agency User Guide.doc

- **TOP Security Access Request Form**
  Filename: TOP Security Access Form.pdf