



Treasury Offset Program

Unemployment Insurance Compensation Debts

Questions and Answers from the Debt Management Services'
August 2, 2011 • UIC Debts Webinar
for U.S. State Governments

Treasury Offset Program (TOP)

- **If an unemployment claim has more than one overpayment debt that meets the criteria for TOP, can multiple overpayment debts be combined into one when submitting to TOP? For example, Snoopy has fraudulent overpayments in the amount of \$200 each in 2009, 2010, and 2011 due to unreported earnings. Can Missouri submit these as one debt of \$600? Or should this be submitted as three separate debts?**

This is entirely up to the state. TOP can accept either way. The state should do whatever is easiest to administer its debts.

- **Does the sixty day prior notice to the debtor have to be a special notice specific to TOP, or can a regular billing notice be considered as this notice if the billing included information regarding TOP?**

As long as the sixty day notice provides all of the information required in the due process notice, the state should have met all requirements for TOP. States should review their notice with their state attorneys to ensure they are covered.

- **If the state had already given the debtor the right to dispute the debt and it is now final, is the state still required to give the debtor an additional opportunity to dispute the debt once the TOP due process notice has been sent to the debtor.**

The notice and sixty day window gives the debtor one additional opportunity to dispute the debt.

- **Does TOP add the \$17 fee to the debt of the individual and then collect that first or do you bill the states for the fee?**

States will choose how the \$17 fee is applied to the offset. States can either ask TOP to add the fee to the debt amount, allowing TOP to take the collection and take the fee when collecting the debt or if the state is not allowed to pass the fee along to the debtor, TOP will net the fee out of the offset collection taken and pass the difference along to the state.

- **In the event that a person is only receiving a payment of \$20, and the TOP fee is \$17, does that mean in that instance that the state will only receive \$3 in offset?**

If the agency is paying the fee, and the amount of the offset is equal to or less than the fee, TOP will not charge the fee and pass the amount of the offset on to the state. In the event that the offset is over the amount of the fee, even by a penny, then the fee is charged and whatever remains will be sent on to the state. In the example above, this means TOP would collect the \$17 fee and pass the remaining \$3 on to the state.

If the state is passing the fee on to the debtor, then the fee is added to the debtor's debt balance. The \$20 will then be sent on to the state and the \$17 fee is added to the debtor's balance in TOP

- **Is the name match a "soft match"? First name only to cover any last name changes?**

TOP matches on name control. It will match on Taxpayer Identification Number (TIN) and the first four characters of a last name. The state can provide TOP with any aliases, if known.

- **TOP matches on both debtor name and TIN. When matching the name, does the match need to be letter for letter? For example, you may have the name “Robert” in your database and I may have “Bob” in mine.**

TOP matches on name control, not the actual name, for all tax refund payments. In addition, the match is always on the last name of the debtor. For example, if the debtor’s name is Smith, the match will occur on the first four characters of that name, “SMIT”.

- **TOP sends a notice of offset to the debtor prior to making the offset. How much time lapses before the offset takes place? Does this notice need to be sent first or will the offset happen simultaneously?**

Both the notice of offset and the offset itself occur simultaneously. TOP normally processes payments for tax refunds up to 10 days in advance. Once this is done, TOP will prepare the letter for mailing so that it should be received about the time the payment would have been received on the payment date.

- **What are the offset priorities between the different programs (e.g. Tax, Vendor, UI)?**

The priority of debts is (1) Internal Revenue Service (IRS) Income Tax debts, (2) Child Support debts, (3) Federal Non-Tax debts, and finally (4) State debts. Within state debts (state income tax debt, state non-tax debt, state unemployment insurance compensation debt), the priority is the debt with the oldest delinquency date regardless of what state program the debt is in.

- **26 USC 6402 states the claimant has the right to seek a waiver. Can you explain this process?**

Federal law (26 U.S.C. 6402(f)) requires the U.S. Department of the Treasury (Treasury) to offset Federal tax refund payments to collect certain types of delinquent debts arising out of state unemployment compensation programs. Before submitting a debt to Treasury for collection, a state must certify that the state has (1) notified the person owing the debt that the state intends to submit the debt to Treasury for collection; (2) provided such person at least 60 days to present evidence as to why the debt is not legally enforceable or not allowed to be submitted to Treasury for collection; (3) considered any evidence submitted by the person; and (4) taken other steps to ensure that the debt is valid and to make reasonable efforts to collect the debt. Treasury regulations (31 CFR 285.8) may be found at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=393ea166a658755bb275f3ef1e5883d3&rqn=div8&view=text&node=31:2.1.1.1.24.1.5.8&idno=31>.

Each state is responsible for establishing its own procedures for collecting unemployment compensation debt. Since you indicate that you are from DC, we suggest that you contact the DC Department of Employment Services [http://app.dc.gov/apps/about.asp?page=htru&type=dsf&referrer=%5b\\$DSF_SERVER_NAME\\$%5d&agency_id=1017&doesNav=|32060|](http://app.dc.gov/apps/about.asp?page=htru&type=dsf&referrer=%5bDSF_SERVER_NAME%5d&agency_id=1017&doesNav=|32060|), or other applicable state agency if you are not from DC, to request information about your rights related to the collection of delinquent unemployment compensation debts.

- **Is a breakdown by year by state of the money received by both the state and IRS for all of the TOP programs available? If so, where?**

FMS is currently preparing an overall chart of collections by state for the TOP program, which will be available shortly.

- **Is FMS currently able to use Connect:Express?**

FMS is currently able to use Connect:Express in production. FMS does not have a test version of Connect: Express.

- **If it is determined the offset was erroneous, how is the refund process handled? For example, the individual is offset and later files an injured spouse claim with IRS. The offset was applied in the TOP to the debt of the “other spouse”. Is the agency responsible for refunding the offset to the injured spouse? If so, how are we notified?**

Yes, the agency is responsible for refunding money to debtors if an offset taken by FMS occurred due to inaccurate debt information provided by the agency/state or over collection.

EXCEPTION- If there is an injured spouse claim, IRS must approve the claim and make the refund. IRS will initiate the refund and notify TOP (run by FMS) of the refund. TOP will then notify your agency or state. Injured spouse claims do not go through the agency or state. TOP will notify agency or state on the collection file and net the refund from that week's collection funds transfer. If your agency or state give a refund for any other purpose, we ask that you notify TOP on the add/update file, so that we can notify IRS. If TOP is not notified of the refund, there is the potential to refund the money twice.

- **Do you have any documentation on how to use frame relay with FMS? Could we test frame relay connection with FMS prior to testing the TOP process? Who would be the technical contact for frame relay?**

Unfortunately Frame Relay is not a network connection option. This was mistakenly placed on the slide provided during the Webinar. Currently, FMS offers Connect:Direct and Connect:Express as network connection options. Any network connection questions can be directed to the FMS Telecommunications Division at 202-874-7099.

- **Can we send all our claimants a notice saying that we may refer them to the Treasury Offset Program for refund offset as a collection tool? Will that cover the 60-day due process notice requirement or do we need to send it to only the delinquent debts?**

The agency/state has to send the due process notice as one of the collection notices after the debt becomes delinquent. This notification can be a part of the letter to the debtor notifying them of their rights to a hearing. It does not need to be a separate letter. We believe the agency/state can include it in the first letter after the debt becomes delinquent to the debtor, so that the 60-day timeframe for TOP can correspond to the agency's hearing timeframe.

As always, please verify with your attorneys that all federal and state laws and regulations are met in the letter. Creditor agencies/states must review regulations and laws authorizing or affecting their particular debts to determine if they contain additional due process requirements.

Safeguard Procedures Report (SPR)

- **If the Department of Revenue within a state currently has an SPR in place but for the purposes of Unemployment Insurance Debts a completely separate agency within the state will be managing the offsets, will that agency need a completely new SPR or can they submit an addendum to the Department of Revenue's SPR?**

In several states, the Department of Labor for that state already receives tax information in order to conduct unemployment and employment tax audits. So if your state's Department of Labor has a preexisting SPR, you can build an addendum onto that. If the Department of Labor is legally a different agency from your Department of Revenue, you will need to develop a completely new SPR.

- **We currently have an SPR with IRS for the tax side of our business. Can we receive a copy of the SPR addendum document now so we could just see what's involved in completing it?**

A copy of the addendum will be added to the web site shortly.

- **Who are the states currently enrolled with SPRs? Which states have SPRs pending?**

As of the date of the webinar, IRS had received and approved SPRs for Wisconsin, Michigan, New York, Pennsylvania, and Connecticut. Additionally, IRS was working with Utah, Arizona, Arkansas, Mississippi, Oregon, and South Carolina to finalize their SPRs.

Unemployment Insurance Compensation Program (UIC)

- **If a State is already participating in the tax and vendor programs and has two separate agency IDs assigned to it for both of those programs, will a new agency ID be assigned for the Unemployment Insurance?**

Once TOP has received approval from the IRS of the Safeguard Procedures Report (SPR), a new and different agency ID will be assigned to the State for collection of unemployment insurance compensation debts.

- **Will TOP accept both claimant and employer unemployment insurance debt? If yes, can TOP offsets be done on the business tax return or is it only on the individual owner/officer's personal tax return?**

As of today, only unpaid employer UI contributions (taxes) that can be certified to an individual can be submitted for the TOP program.

- **Will TOP offset both tax payments and vendor payments for Unemployment Insurance Compensation debt offsets?**

No. TOP is only authorized to match unemployment insurance compensation debts against individual tax refund payments. TOP will not match the UIC debts against vendor payments.

- **In the priority of payments, is Unemployment Insurance considered Federal NonTax or State debt?**

It is considered State debt.

- **Our state participates in the State Reciprocal Offset Program and the Federal Tax Refund Offset Program. Do we need special programming, law changes, etc. for the UI piece or will you be able to see that the debt is a UI debt and offset vendor and income tax payments in the same file?**

It is best to check with your attorneys to determine if you need law changes.

When a state refers UI debts to TOP, they are treated like a separate agency. You will not be able to refer UI debts on the same file as your state reciprocal or state tax file.

An addendum to your SPR will have to be approved by IRS and you will need to test the new file with FMS. The best place to start is to send a meeting request to safeguardreports@irs.gov to determine what needs to be done for you SPR.

- **Will the Unemployment Insurance (UI) program have a different agency/agency site ID? Will there be separate transmission files for these?**

Yes, each state will have a different agency/agency site ID for this program. The states will be set up as a new site in TOP, so the file transmissions will also be separate from other state files. Please contact FMS-Treasury Offset Division at 202-874-0540 directly for the new agency ID when you are ready to begin the program.

- **Does TOP also apply to unpaid contributions (taxes) due from an employer or is it applicable to overpaid benefits?**

Yes, TOP authorizes states to submit unpaid UI contributions (tax), interest, and penalties, for employers that are sole proprietors or partnerships, which owe debt that can be certified by the state to an individual.