

Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

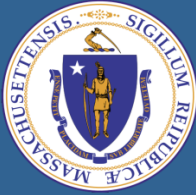
Making government work better

Official Audit Report – Issued June 15, 2018

Department of Unemployment Assistance

For the period July 1, 2013 through December 31, 2016





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

June 15, 2018

Ms. Rosalin Acosta, Secretary
Executive Office of Labor and Workforce Development
1 Ashburton Place, Suite 2112
Boston, MA 02108

Dear Secretary Acosta:

I am pleased to provide this performance audit of the Department of Unemployment Assistance. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, July 1, 2013 through December 31, 2016. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Unemployment Assistance for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Richard Jeffers, Director, Department of Unemployment Assistance

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	2
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	8
DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE.....	12
1. The Department of Unemployment Assistance did not properly administer the collection of millions of dollars in unemployment insurance contributions.	12
2. DUA did not intercept over \$18 million in payments made by the Commonwealth to state contractors who had delinquent UI contributions.	15
OTHER MATTERS	19

LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
DUA	Department of Unemployment Assistance
EOLWD	Executive Office of Labor and Workforce Development
IRS	Internal Revenue Service
IT	information technology
OSA	Office of the State Auditor
OSC	Office of the State Comptroller
UI	unemployment insurance

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of the Department of Unemployment Assistance (DUA) for the period July 1, 2013 through December 31, 2016. In this performance audit, we examined DUA's process for maximizing the collection of delinquent unemployment insurance (UI) contributions due from businesses with employees working full time, temporarily, or part time on one or more days in any 13 weeks during a calendar year and businesses that pay wages of \$1,500 or more in any calendar quarter.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 12	DUA did not properly administer the collection of millions of dollars in UI contributions.
Recommendation Page 15	DUA should establish formal policies and procedures for all activities regarding the administration of its collection process and implement effective monitoring controls to ensure that these policies and procedures are adhered to. The policies and procedures should include a policy that provides for the charge-off or removal of any delinquent employer account where the amount owed is 10 dollars or less.
Finding 2 Page 15	DUA did not intercept over \$18 million in payments made by the Commonwealth to state contractors who had delinquent UI contributions.
Recommendation Page 17	DUA should engage with the Payment Intercept Program and put in place an interface with that program to ensure that employers with delinquent UI contributions owed to DUA cannot receive funds from the Commonwealth via approved contracts.

During our audit, DUA imposed significant constraints on the audit process. Specifically, the agency did not respond to repeated verbal and written requests for specific documentation in a timely manner and did not provide timely access to its electronic accounts receivable records. Further, DUA unnecessarily delayed the conduct of our audit work and denied OSA personnel access to data pertaining to our audit objective. Although OSA was eventually able to complete the audit work necessary to meet the audit objective, these constraints significantly delayed the completion of this audit.

OVERVIEW OF AUDITED ENTITY

The Executive Office of Labor and Workforce Development (EOLWD) is authorized by Section 1 of Chapter 23 of the Massachusetts General Laws and operates under the direction of the Secretary of Labor and Workforce Development, who is appointed by the Governor. EOLWD comprises five departments that offer a wide range of programs and resources for both employers and job seekers: the Department of Career Services, the Department of Industrial Accidents, the Department of Labor Relations, the Department of Labor Standards, and the Department of Unemployment Assistance (DUA). EOLWD also oversees Commonwealth Corporation, which offers programs and services to help citizens of the Commonwealth secure employment.

As part of EOLWD, DUA is responsible for administering the Unemployment Insurance (UI) Program in the Commonwealth. It provides financial assistance and transitional services to unemployed Massachusetts citizens who are able to work, available to work, and looking for employment, with the goal of helping them become re-employed. The Commonwealth provides up to 30 weeks of UI benefits during the period that an individual is unemployed.

The federal Social Security Act of 1935 created the UI Program as a joint federal-state partnership, with each state responsible for designing its own program within broad federal guidelines. The US Department of Labor oversees the system, and each state administers its own program. In 1937, Congress passed the federal Unemployment Tax Act, which authorized the Internal Revenue Service (IRS) to collect an annual federal employer tax used to fund state workforce agencies and cover the costs of administering the UI Program in all states. The federal government sets broad guidelines for coverage and eligibility, but states vary in how they determine eligibility. Within these federal constraints, individual states are allowed to establish their own UI payment requirements for employers and run their own programs.

According to DUA's website, most employers that do business in Massachusetts must pay UI contributions if they have one or more individuals working permanently, temporarily, or part time on one or more days in any 13 weeks during a calendar year or pay wages of \$1,500 or more in any calendar quarter. Businesses that employ agricultural workers must make UI contributions if they pay wages of \$40,000 or more in any calendar quarter or employ 10 or more individuals on any day in any 20 weeks in a calendar year. In addition, the IRS levies a payroll tax on employers in each state to fund

things such as benefit payments to former federal government and military employees, administrative costs related to the operation of state unemployment assistance agencies like DUA, and loans to eligible states whose financial resources do not allow them to meet their UI obligations.

DUA paid UI benefits totaling \$2.1 billion in fiscal year 2014, \$1.6 billion in fiscal year 2015, and \$1.47 billion in fiscal year 2016. DUA's operating expenditures for the same fiscal years were \$88 million, \$84 million, and \$70 million, respectively. As of February 2017, DUA had 444 full-time employees.

Massachusetts Unemployment Insurance Law

The Massachusetts Unemployment Insurance Law (Chapter 151A of the General Laws) governs all aspects of the UI Program. Specifically, it addresses all aspects of unemployment compensation, including employer contributions to the Commonwealth's Unemployment Compensation Fund and the rates used; nonprofit organizations and governmental employers and their liability for payments; failure to file and collection of overdue payments; unemployment benefit claims; payment of and eligibility for benefits, claims, and appeals; records and reports; a state advisory council and its powers and duties; the charge-off of uncollectible amounts; and the jurisdiction of action to enforce the law.

Massachusetts Regulations Regarding Unemployment Assistance

Chapter 430 of the Code of Massachusetts Regulations (CMR) establishes all provisions regarding DUA. Responsibilities incumbent upon businesses are set forth in 430 CMR 5.00, including reporting requirements, contribution reports, wage reports, work records, experience rating,¹ and payment in lieu of contributions.² According to 430 CMR 5.06(5),

All non-profit organizations and governmental employers which have elected to make payments in lieu of contributions pursuant to M.G.L. c. 151a, § 14A shall file in the form and manner as prescribed by the Commissioner [the director of DUA] a quarterly report on wages and employment. The due date for filing the reports shall be the last day of the first month succeeding the date on which the quarter ended.

-
1. New employers' contribution rates become "experience rated," as DUA refers to them, in the third year their UI accounts exist. A UI account is a record of the contributions paid to DUA and the amount of UI benefits paid to an employer's workers or former workers. It is maintained to determine the annual tax rate for each employer. A history of properly paid contributions and fewer layoffs means a better experience rating.
 2. Payments in lieu of contributions are payments due the Commonwealth's Unemployment Compensation Fund.

DUA Employers

Once an employer has registered with DUA and it has been determined that the employer is required to pay UI contributions, the employer's information is maintained in its individual account at DUA. The account is a record of the wages subject to contribution, the contributions actually paid by the employer, the UI benefits charged to the employer, and any account balance adjustment. DUA uses the account information to determine an annual contribution rate for that employer. DUA describes the state contribution as "experience rated," meaning the amount of the unemployment contributions an employer pays, based on the assigned rate, is directly related to the amount of UI benefits paid to its employees.

For the contribution rate to be calculated correctly, employers are required to provide DUA with information about total wages paid quarterly. If an employer does not report its quarterly wages paid, DUA may estimate the amount of contributions due and assess and collect contributions, penalties, and interest accordingly.

Employers must pay their contributions quarterly. If an employer does not pay by the due date, a penalty is assessed and a Demand for Payment is sent. As of December 31, 2016, there were 212,590 active contributing employers and 2,649 active reimbursing employers in Massachusetts.³ Except where noted in law, contributing employers include all non-reimbursing employers paying more than \$1,500 in quarterly employee wages. Contributing employers pay DUA quarterly on the first \$15,000 of each employee's income. DUA annually calculates the rate for each employer based on several factors, including the employer's history of filing unemployment claims.

Delinquent Account Collection Process

As noted above, funding for UI benefits comes from quarterly contributions paid by the state's employers to DUA. DUA is responsible for the initial collection efforts—specifically, generating a monthly automated billing statement—for all employers that are delinquent in their UI contributions. If an employer's contribution has not been made within 30 days after the due date, the account becomes delinquent, and interest and penalties may be assessed. An interest rate of 12% per year, or the interest rate established by the Department of Revenue as of January 1 of the calendar year, whichever is higher, is assessed. Billing statements are initiated when debt is past due because of nonpayment based on filed

3. A reimbursing employer reimburses DUA dollar for dollar for UI benefits paid to the employer's staff. Reimbursing employers include nonprofit organizations, governmental entities, and Native American tribes and tribal units.

wages, upward adjustments to filed wages made by the employer, or adjustments resulting from field audits.⁴ If contributions are not collected by 45 days after an employer's UI quarterly contribution is due, employers with accounts exceeding \$10,000 are referred to DUA's Revenue Enforcement Department for more aggressive collection actions, including contacting the employer by phone, establishing payment plans for the employer based on its outstanding balance, filing real and/or personal property liens, executing Notices of Levy,⁵ and seeking civil or criminal judgments through the Massachusetts Office of the Attorney General. Action is not taken against accounts less than \$10,000 in arrears; those accountholders can continue to accumulate debt. It should be noted that DUA has the authority to refer all employers with delinquent UI contributions, regardless of the amounts owed, to its Revenue Enforcement Department. Another recovery option available to DUA and other state agencies is the Payment Intercept Program, whereby state payments due the employer, including tax refunds, are intercepted and transferred to DUA to pay off delinquent accounts. Regarding account levies, Section 15A(a) of Chapter 151A of the General Laws states,

If any employer fails to pay any amount required under this chapter within ten days from the date notice to satisfy a judgment has been mailed to such employer, the Commissioner [the director of DUA] may levy upon the account of such employer being maintained by any bank or other depository in the commonwealth.

As of June 30, 2016, DUA's records identified approximately \$414.6 million in delinquent contributions and interest owed by Massachusetts employers to DUA. This information was extracted from DUA's records, and we did not assess the collectability of these delinquent contributions and their related interest. However, using DUA's records, we adjusted this amount, and we estimate up to \$284.4 million, as of December 31, 2016, to be a more accurate representation of DUA's delinquent contributions' account balance,⁶ as detailed below.

4. In a field audit, DUA field auditors review employer payrolls and check for accuracy of their wage reporting.

5. Notices of Levy are notifications to an employer's bank/s requiring the bank/s to withdraw funds held by the employer to satisfy its UI debt.

6. DUA records include billings for UI contributions as of June 30. These billings are considered earned revenue (accruals) and were not included as possibly collectible, as one cannot predict what percentage of these accruals will be paid on time. In addition, DUA records include payments received that could not be applied to a specific employer because of missing information, known as unmatched allocations, which were therefore not included in DUA's delinquent UI contribution balance.

Employers with Delinquent UI Contributions and Interest

Outstanding Balance	Number of Employers	Amount Owed
\$100,000 +	370	\$ 126,324,337
\$50,000–\$99,999.99	464	31,884,181
\$10,000–\$49,999.99	3,449	71,151,332
\$1,000–\$9,999.99	13,727	45,774,474
\$10.01–\$999.99	43,737	9,241,344
\$0.01–\$10	77,006	77,751
Total	<u>138,753</u>	<u>\$ 284,453,420*</u>

* This total was rounded to the nearest dollar.

UI Online

UI Online is an automated system that enables employers to conduct business with DUA electronically. UI Online transactions involve processing employers' contributions to the UI Program. These contributions become part of the revenue pool from which claimants who qualify for UI may be paid. Because of various automation problems with UI Online, which are discussed in the Other Matters section of this report, letters issued as part of the debt collection process, including Certified Assessments, Requests for Judgment, Notices of Lien, and Notices of Levy, are created by the Revenue Enforcement staff outside UI Online, in Microsoft Word, and must later be scanned into UI Online to maintain evidence that they were generated.

A Certified Assessment is a notice sent to an employer by DUA's Revenue Enforcement Department staff, using registered or certified mail, to ensure that the employer is aware of its outstanding UI debt. The employer has 10 days to appeal the assessment; if it does not, DUA can make a Request for Judgment to a court, which extends the statute of limitations for collections from 6 years to 20 years. A Request for Judgment also permits DUA to use stronger enforcement tools for its collection process, including a Notice of Lien and/or Notice of Levy. DUA can place liens on the properties of employers that fail to pay off outstanding UI debt. A lien allows DUA to keep possession of an employer's property until the owed amount has been paid in full. DUA can also levy the bank accounts of employers that fail to pay off outstanding UI debt to DUA. A levy requires that the bank surrender any money available to pay the past-due debt in a sum equal to the amount owed. DUA may also levy a state agency that is making payments to an employer with outstanding UI debt (see Sections 15, 15A, and 16 of Chapter 151A of the General Laws).

DUA staff members enter information associated with their collection activity first in DUA's Microsoft Access database and then in UI Online. DUA management stated that entry in UI Online does not always happen, leading to missing information and/or documentation related to collection activity in the UI Online system.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of the Department of Unemployment Assistance (DUA) for the period July 1, 2013 through December 31, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards except in the areas of internal controls and information technology (IT) general controls. In both areas, DUA did not have documented procedures for our review and denied us access to operating personnel who could have given us explanations regarding procedures, system design, and controls. Generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding the objective, and where the objective is discussed in this report.

Objective	Conclusion
1. DID DUA maximize its collection efforts for delinquent unemployment insurance (UI) contributions due from employers?	No; see Finding 1 , Finding 2 , and Other Matters

Audit Constraints

Our audit was initiated to assess DUA's collection activities for delinquent employer UI accounts receivable. We also wanted to assess the internal controls that DUA had established for these activities. However, DUA did not respond to repeated verbal and written requests for specific documentation in a timely manner and did not provide timely access to its electronic accounts receivable records. Further, DUA unnecessarily delayed the conduct of our audit work and denied OSA personnel access to data pertaining to the audit objective from its UI Online data warehouse and Microsoft Access database.

Section 7.11 of Chapter 7 of the US Government Accountability Office's Government Auditing Standards states, "Auditors should . . . report any significant constraints imposed on the audit approach by

information limitations or scope impairments, including denials or excessive delays of access to certain records or individuals.”

During our audit, DUA imposed the following constraints on the audit process:

- At DUA’s request, on April 28, 2016, OSA suspended the audit. The agreement reached between OSA and DUA was that the audit could recommence in July 2016. However, in July 2016, DUA officials informed OSA that it did not have the resources necessary to support the audit; it did not allow us to recommence the audit until February 14, 2017.
- DUA did not have documented internal controls, nor did it allow us to observe the accounts receivable cash collection process so we could properly assess the process and identify internal controls. Therefore, we were unable to evaluate the internal controls in place regarding our audit objective.
- We were not given access to DUA’s data center, system documentation, or IT personnel to evaluate general information controls such as access to programs and data, program changes, computer operations, and physical and electronic safeguards.
- DUA did not provide audit reports prepared by external auditors and stated that its internal auditors did not conduct any audits of its accounts receivable.
- DUA did not provide access to UI Online, where the UI accounts receivable information is maintained, in a timely manner. Our initial request for access to UI Online was made in February 2017, and because of DUA’s concerns over confidentiality, access was denied. In June 2017, DUA and OSA reached a confidentiality agreement; however, an additional 2.5 months elapsed before OSA gained access to the UI Online data warehouse.
- In March 2017, before gaining access to UI Online, OSA began working with various DUA management personnel and staff members to generate a list of delinquent UI accounts that would allow OSA to select a sample to test collection activities. After receiving a report from DUA on April 27, 2017 and working with DUA’s staff to validate the report, OSA selected a sample. On June 29, 2017, OSA staff met with the collections manager to conduct a test of collection activities. It was at this point in the process that OSA was informed that only delinquent UI accounts with balances at or above \$10,000 of real debt⁷ would be assigned to the Revenue Enforcement Department staff for collection. Because our sample consisted largely of assessed debt, it was not suitable for conducting our test of collection activities.
- On June 30, 2017, OSA audit staff members requested a report that would differentiate between the amount of UI debt that was assessed by DUA to employers and what DUA refers to as its real debt. However, DUA officials stated that the agency could not provide this information.

7. Real debt is the amount DUA believes it will actually be able to collect from the employer. This amount is the amount of principle, accrued interest, and penalties from unpaid UI contributions.

Despite these unreasonable constraints imposed by DUA, OSA was able to perform alternative auditing procedures to meet the audit objective sufficiently.

Methodology

We performed the following procedures to obtain sufficient appropriate audit evidence to address our objective:

- We applied data analysis software to the UI Online database to extract the number of employers with delinquent UI contributions and to develop statistics regarding collectible delinquent contributions and interest from employers. We reviewed DUA's use of payment plans, real property liens, personal property liens, and civil judgments to collect delinquent UI contributions from employers. In addition, we examined DUA's use of available tools, including both state and federal tax refund intercepts, to proactively recover identified delinquent UI contributions owed by employers. We also included, using data analytics, additional money from outside our audit period that could have been intercepted had DUA participated in the Payment Intercept Program in 2010. We also reviewed various records to determine to what extent DUA used its authority to obtain security collateral from applicable reimbursing employers to ensure that payments would be made. In addition, we determined whether the Commonwealth had made vendor payments to employers who owed over \$1,000 to DUA.
- During our audit, we extracted information from UI Online about all accounts receivable as of December 31, 2016. The information included all collectible debt, listed by each employer's Federal Employer Identification Number and amount owed. We reviewed the DUA Collections Activity Report and compared these two sources to determine against which employers DUA had initiated collection efforts. We then compared the employers that had outstanding UI contributions to the information about agency expenditures in the Commonwealth Information Warehouse (CIW)⁸ to determine whether the employers were also registered as contractors with state agencies and had received payments from the Commonwealth.
- OSA's legal staff reviewed regulations to determine whether DUA could have implemented the Payment Intercept Program to collect payments made by the Commonwealth to state contractors who had delinquent UI contributions if it had chosen to do so.
- We performed data validity and integrity tests on data received from DUA in various spreadsheets, including testing for missing data and scanning for duplicate records and hidden rows, columns, and formulas. We also ensured that data from UI Online were accurately reflected in the reports provided to the audit team by DUA management.

OSA also conducted a separate data-reliability assessment of the Massachusetts Management Accounting and Reporting System, which contains the source data for information in the CIW. As part of this assessment, we tested general IT controls for system design and effectiveness. Based on these

8. The CIW is a state database that contains the financial, budgetary, human resource, payroll, and time reporting information for each state agency

analyses, we determined that the data obtained from DUA's electronic records and the CIW were sufficiently reliable for the purposes of this audit. We relied on the hardcopy source documents for other data needs.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Department of Unemployment Assistance did not properly administer the collection of millions of dollars in unemployment insurance contributions.

The Department of Unemployment Assistance (DUA) did not properly administer the process it uses to collect delinquent unemployment insurance (UI) contributions from Massachusetts employers. As a result, the Commonwealth is losing the opportunity to receive significant revenue that could be used to fund unemployment benefits.

Specifically, according to its records, DUA did not refer for collection to the Revenue Enforcement Department over \$170 million of the \$284,453,420⁹ in delinquent UI payments and interest owed to it as of the end of our audit period, as detailed below.

DUA Collection Activity for Employers with Delinquent UI Contributions

Outstanding Balance	Number of Employers	Did Not Attempt to Collect	Attempted to Collect	Total Amount Owed
\$100,000+	370	\$ 64,335,721	\$ 61,988,616	\$ 126,324,337
\$50,000–\$99,999.99	464	9,935,987	21,948,194	31,884,181
\$10,000–\$49,999.99	3,449	44,066,645	27,084,687	71,151,332
\$1,000–\$9,999.99	13,725	42,878,578	2,895,896	45,774,474
\$10.01–\$999.99	43,741	9,147,466	93,879	9,241,344
\$0.01–\$10.00	77,004	77,094	657	77,751
Total	<u>138,753</u>	<u>\$170,441,490*</u>	<u>\$114,011,930*</u>	<u>\$284,453,420*</u>

* These totals have been rounded to the nearest dollar.

According to regulation and statute, DUA can use various tools to enforce the payment of delinquent UI contributions from Massachusetts employers, the most significant of which include the following:

- placing levies after a court judgment and formal notice on both a delinquent employer's bank account and state or local government funds owed to the employer
- placing liens on real estate owned by a delinquent employer
- seeking assistance from the state Department of Revenue in locating employers not registered with DUA so that DUA can pursue collection activities

9. According to DUA's records, more than \$231 million of this amount had been delinquent for six years or less.

- initiating civil complaints
- intercepting state and federal payments due the employer, including state and federal tax refunds, and transferring them to DUA to pay off delinquent UI accounts
- seeking prosecution of individuals and principals in corporations by the Massachusetts Office of the Attorney General for not paying UI contributions

However, for the \$170 million identified by our audit, DUA did not take any of these measures to collect delinquent contributions.

Further, DUA did not properly manage the volume of its delinquent accounts. Specifically, Section 69A of Chapter 151A of the Massachusetts General Laws gives DUA the authority to annually charge off, or remove from its accounting records, the balance of any delinquent employer account where the amount owed is 10 dollars or less, but it chose not to do so. Charging off these accounts would have decreased the number of delinquent employers by more than 55% (decreasing it by 77,004 employers, totaling \$77,751 in delinquent UI contributions) and possibly made it easier for DUA to collect contributions from other employers with delinquent accounts.

DUA was in the process of collecting \$114,011,930 of the \$284,453,420 owed to it as of the end of our audit period. However, according to its records, it did not refer individual accounts receivable from employers that had a debt of \$10,000 or more, totaling \$111,021,498, to its own Revenue Enforcement Department in a timely manner. In fact, DUA took more than a year to initiate collections on the amounts owed by 1,057 (68%) of those employers, totaling \$86,848,333. For 336 (21%) of the employers, it took five or more years to initiate collection, as detailed below.

DUA Collection Summary for Employers Owing \$10,000 or More

Time to Initiate Collection	Number of Employers	Amount Attempted to Collect
5 or More Years	336	\$ 32,456,241
3–5 Years	285	21,735,141
2–3 Years	195	12,123,122
1–2 Years	241	20,533,829
6 Months–1 Year	125	6,942,087
30 Days–6 Months	108	6,054,706
30 Days or Less	273	11,176,372
Totals	<u>1,563*</u>	<u>\$ 111,021,498</u>

* There are 1,563 distinct employers associated with 1,602 collection cases.

Further, for this \$111,021,498, we found the following additional collection deficiencies:

- DUA did not file liens for 523 (33%) of the collection cases and thus did not ensure that it promptly secured its interest in delinquent employers' real or personal¹⁰ property.
- DUA did not pursue civil judgments against employers for 737 (46%) of the collection cases.
- DUA did not issue Notices of Levy to identify and levy the financial accounts for 396 (46%) of the 853 collection cases that received a judgment against applicable employers.

Authoritative Guidance

According to regulations promulgated by the Office of the State Comptroller (OSC), state departments such as DUA are required to follow certain procedures for collecting outstanding debt. Section 9.03 of Title 815 of the Code of Massachusetts Regulations (CMR) discusses diligent efforts for collecting past-due debt:

State Department Billing Entities are responsible for making diligent efforts to collect legislatively authorized Accounts Receivables and Debts . . . [and] are required to maintain detailed records to support the Collection of an Accounts Receivable.

Regarding liens, Section 16 of Chapter 151A of the General Laws requires DUA to place a lien on property owned by any company that has certain delinquent UI contributions:

Judgments obtained under any provision of section fifteen and overdue contributions or payments in lieu of contributions, with interest thereon or penalties assessed in lieu of interest thereof, shall until collected be a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal.

According to DUA's Employer Accounts Receivable Process document, a civil judgment extends the statute of limitations for collecting a delinquent balance to 20 years from the date of the judgment, as opposed to 6 years after the end of the calendar year without a judgment. Employers with delinquent UI accounts over \$100,000 will be referred to the Massachusetts Office of the Attorney General for criminal prosecution.

Reasons for Noncompliance

DUA had not established formal policies and procedures and lacked sufficient monitoring controls and oversight of its collection process to ensure that its collection activities were conducted efficiently and

10. Personal property is portable property, including anything that can be conditional on ownership, except land. Real property is fixed property, including land and anything attached to it.

effectively. DUA management informed us that it did not have adequate staff to conduct all the required collection procedures.

Recommendation

DUA should establish formal policies and procedures for all activities regarding the administration of its collection process and implement effective monitoring controls to ensure that these policies and procedures are adhered to. The policies and procedures should include a policy that provides for the charge-off or removal of any delinquent employer account where the amount owed is 10 dollars or less.

Auditee's Response

Department of Unemployment Assistance (DUA) performs activities for collecting Unemployment Insurance (UI) debt as outlined in G.L. Chapter 152 §§15, 15A and 16. For fiscal years 2014, 2015, and 2016 (audited periods) UI contributions were \$2,152,271,365; \$1,294,872,062 and, \$1,657,924,243 respectively. During this period, approximately 90% of contributions were paid on time.

DUA acknowledges the impact of manual revenue enforcement processes on its ability to track and collect outstanding UI debt. DUA will review, update and make enhancements to current practices, policies, and systems to maximize its potential for collecting outstanding UI debt, and automating processes.

Additionally, DUA will collaborate with the Finance Department of the Executive Office of Labor and Workforce Development (EOLWD), to review and correct practices related to writing off UI debt. This will allow us to focus our efforts on collectible debt.

Auditor's Reply

In its response, DUA asserts that during the audit period, approximately 90% of the contributions for UI contributions were paid on time. Although we cannot comment on the accuracy of this statement, our concern, as noted above, was that DUA was not properly administering its process for collecting delinquent UI contributions from Massachusetts employers and that as a result, the Commonwealth was losing the opportunity to receive significant revenue.

Based on its response, DUA plans to take measures to address our concerns in this area.

2. DUA did not intercept over \$18 million in payments made by the Commonwealth to state contractors who had delinquent UI contributions.

DUA did not use the Commonwealth's ability to intercept payments such as tax refunds or state contractual payments due employers registered as state contractors who had outstanding UI

contributions. DUA had not created an interface with the Payment Intercept Program to ensure that an employer with debt owed to DUA would not be able to receive funds from the Commonwealth via an approved contract. As a result, DUA lost the opportunity to collect millions of dollars in revenue for the Commonwealth.

Specifically, using data analytics we identified employers who owed UI contributions to DUA as of December 31, 2016 and also functioned as contractors with Commonwealth agencies. During our audit period, these 1,260 vendors received \$18,356,028 in payments from state agencies, none of which was intercepted, even though DUA was aware that these contractors had delinquent UI contributions.

Non-Intercepted Payments Made to State Contractors

Outstanding Balance	Number of Employers	Amount Eligible for Intercept
\$100,000 +	26	\$ 8,112,811
\$50,000–\$99,999.99	35	2,402,267
\$10,000–\$49,999.99	241	4,892,666
\$1,000–\$9,999.99	785	2,890,094
\$10.01–\$999.99	173	58,190
Total	<u>1,260</u>	<u>\$ 18,356,028</u>

In addition, although it was outside our audit period, using data analytics we determined that if DUA had participated in the Payment Intercept Program, it could have intercepted, from 2010 to the beginning of our audit period, up to an additional \$6.4 million in delinquent UI contributions from 285 contractors who were on its list of delinquent accounts. From our audit period, we also found open liens and an additional 33 employers with delinquent accounts totaling \$31,650, none of which DUA included in its accounts receivable or its UI Microsoft Access database of collectible accounts.¹¹

Authoritative Guidance

As a first step in maintaining a collection process for accounts receivable balances, 815 CMR 9.03(4), promulgated by OSC, states,

*(c) **Dunning Notices.** If the initial bill is not paid in full by the Debtor by the payment due date, and the Debt has not been disputed by the Debtor, a Billing Entity must demonstrate diligent efforts to collect the Debt. Diligent efforts shall include at a*

11. Although not on DUA's current list of UI collectibles, these employers were found via liens in two Registry of Deeds databases. There was no indication that any of the funds they owed had been collected by DUA.

minimum, but shall not be limited to, three written billing and Dunning Notices in addition to the initial billing, and a final notice.

"Final notice" is defined in 815 CMR 9.03(4)(d) as follows:

5. *Final Notice.* *A final notice (usually when 90 days past due) that the Debt is eligible for immediate referral to Intercept and may also be submitted to a Collection Agency for Collection, and may be subject to Late Fees and Collection Charges.*

Reasons for Noncompliance

Although the Payment Intercept Program is in place statewide to prohibit taxpayers indebted to the state from receiving revenue from the state, DUA had not established an interface with this program. DUA officials told us that they had been exploring using the program but had not gotten around to taking the measures necessary to begin using it.

Recommendation

DUA should engage with the Payment Intercept Program and put in place an interface with that program to ensure that employers with delinquent UI contributions owed to DUA cannot receive funds from the Commonwealth via approved contracts.

Auditee's Response

It is the position of DUA's legal department that CMR 815 9.00 et seq. does not assign authority for intercepting employer tax returns and/or other payments at the state level and without its own authority DUA cannot intercept via the comptroller's office under the regulations. DUA has an explicit grant of authority in G.L. c. 151A, § 69B to intercept claimants' tax refunds. Under principles of statutory interpretation, if a specific grant of authority is given as to one group, others not specifically included are excluded. Thus, DUA concluded, it did not have statutory authority to intercept payments from employers via a state tax intercept.

The Comptroller's regulations [in 815 CMR 9.01(2)] state "[a]bsent separate statutory authority, no State Department Billing Entity may intercept payments owed Debtors, or enter into a contract for Debt Collection Services except as provided under 815 CMR 9.00."

DUA will review, update and make enhancements to current policies and procedures to promote collection of outstanding UI debt, and leveraging options for pursuing aged debt. This includes but is not limited to receiving offsets of federal tax refunds and participating in the federal [Treasury Offset Program].

Auditor's Reply

DUA incorrectly interprets 815 CMR 9.01(2) as precluding it from using OSC's Intercept Program. The "except as provided" language indicates that DUA shall follow 815 CMR 9.00 absent separate statutory authority to do otherwise. Further, 815 CMR 9.02 allows but does not require state agencies with separate statutory debt collection authority to use the Payment Intercept Program if they so choose:

The Collection of certain Revenues with separate Debt Collection authority, including taxes, lottery operations, State investments, federal grants and reimbursements, Medicaid vendor overpayments are not included under 815 CMR 9.00 unless the Billing Entity chooses to use the Statewide Debt Collection Agency Contract or Intercept to collect these Debts.

Even with separate statutory authority to do otherwise, 815 CMR 9.00 allows DUA to follow either process.

In addition, Section 15A of Chapter 151A of the General Laws applies if there is a notice to satisfy a judgment, which is a court order. In the event that some of this money is pursuant to a court judgment, this section applies. Otherwise, DUA would proceed under 815 CMR 9.00. Specifically, Section 15A of Chapter 151A of the General Laws states,

(c) If any employer fails to pay any amount required under this chapter within ten days from the date notice to satisfy a judgment has been mailed to such employer, the commissioner or the commissioner's agent may file a notice of levy with any agency or instrumentality of the commonwealth or with any political subdivision of the commonwealth, with a copy of said notice being mailed to the employer and when so filed the levy shall be an attachment upon any payment due the employer from said agency, instrumentality or political subdivision. Upon filing of the notice of levy said agency, instrumentality or political subdivision shall forward to the commissioner or the commissioner's agent any payment owed the employer until the liability out of which the levy arose is satisfied or becomes unenforceable by reason of lapse of time. The notice of levy shall lapse if not satisfied within six months from the date of service of the notice on the agency, instrumentality or political subdivision.

Therefore, DUA could have implemented, but did not implement, the Payment Intercept Program to collect the more than \$18 million in payments made by the Commonwealth to state contractors who had delinquent UI contributions.

OTHER MATTERS

Inefficiencies in Revenue Collection

In December 2009, the Department of Unemployment Assistance (DUA) installed an automated unemployment insurance (UI) system called UI Online, which included a revenue component. However, according to DUA management, when this new system was implemented, it did not provide for records of collection activity performed on delinquent employer accounts to be carried over from its legacy system. Management stated that as a result, to find past delinquent UI contribution records, DUA had to retrieve hardcopy records for each associated employer and then determine what collection activities, if any, need to be completed moving forward.

Additionally, the UI Online automated processes associated with the Revenue Enforcement Department did not function as intended. Specifically, on August 22, 2017, we met with DUA management for a walkthrough of the collection-activity process. During this walkthrough, DUA stated that employer accounts assigned to the DUA Revenue Enforcement Department staff for collection were entered in a separate collection database for assignment and tracking purposes. DUA stated that as a result, it had to implement a manual process, which it still uses today to track the contacts made by the Revenue Enforcement Department staff and employers in an effort to settle outstanding debt. Further, DUA stated that letters created and issued as part of the debt collection process, including Certified Assessments, Requests for Judgment, Notices of Lien, and Notices of Levy, must be created outside UI Online, in Microsoft Word, and later scanned into UI Online, which creates inefficiencies in the process and a higher likelihood of error.

In addition, during the walkthrough, DUA management informed us that staff members must first enter information associated with their other collection activity in DUA's Microsoft Access database and then reenter the information in UI Online. That information transcription in UI Online does not always happen; this leads to missing information and/or documentation related to collection activity in UI Online. DUA management has also acknowledged a lack of institutional knowledge of the various functions related to assessing and collecting UI contributions in this system and has cited this lack of institutional knowledge as a cause for its inability to provide timely, comprehensive responses to our requests for information.

Finally, DUA's internal control documentation does not describe the UI Online system or the controls that have been implemented to ensure its continued effective and efficient operation.

We recommend that DUA work on developing and funding changes to UI Online that will allow it to use the technology available in this system to manage its revenue collection process more effectively and efficiently.