

UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK

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UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK

## LEGAL AND ADMINISTRATIVE PROVISIONS

**I**NTRODUCTION

**1. Introduction.** The purpose of this Handbook is to provide procedural guidelines for the operation and administration of the Disaster Unemployment Assistance (DUA) program.

**2. Legislative Authority.** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121 note) as renamed from The Disaster Relief Act of 1974 (DRA) by The Disaster Relief and Emergency Assistance Amendments of 1988 (the DREA) (Title I of Public Law 100-707, 102 Stat. 4689), enacted on November 23, 1988. (*See Appendix A.*)

The DUA program is established by Section 410 (42 U.S.C. 5177) (redesignated from Section 407 of the DRA) of Title IV of the Stafford Act and is referred to as the "DUA Program." Section 423 (42 U.S.C. 5189a) of the Stafford Act provides the right of appeal and the time frame for an individual to file an appeal. It also provides the time frame for a Federal official to issue a decision on the issue appealed.

Section 308 (42 U.S.C. 5151) of the Stafford Act requires regulations prohibit discrimination in the processing of applications and other relief and assistance activities, based on race, color, religion, nationality, sex, age, or economic status.

**3. Regulatory Requirements.** The Department of Labor's Regulations implementing the requirements of the Stafford Act are published in the Code of Federal Regulations at 20 CFR Part 625. (*See Appendix B.*)

**4. Definitions.** The definitions of terms used in this Handbook are contained in the DUA regulations (*Appendix B*) or in the Glossary (*Appendix C*).

**5. Jurisdictional Responsibilities.** The President, by Executive Order No. 12673 of March 23, 1989 (54 FR 12571), delegated the responsibility for administering the Stafford Act to the Federal Emergency Management Agency (FEMA). FEMA has delegated to the Secretary of Labor the responsibility of administering those provisions of the Stafford Act which pertain to the DUA Program and payment of DUA benefit assistance. FEMA furnishes funds to the Secretary of Labor, or to his/her designee, who makes funds available to States, that enter into an Agreement with the Secretary of Labor, for States' DUA administrative costs and the payment of DUA to eligible individuals. (Only in special circumstances is the establishment of Disaster Recovery Centers (DRCs) required by FEMA; therefore, funds for administrative costs to staff DRCs are not authorized unless special circumstances exist.) (See also Chapter IX.)

**6. Agreements with States.** States, through Agreements between the States and the Secretary, act as agents of the Secretary for the purpose of providing assistance to applicants in the various States (which include certain South Pacific Island jurisdictions) who are unemployed as a direct result of a major disaster declared by the President.

The State agency is required to make available a copy of the Agreement to any individual or organization for inspection and copying upon request.

**7. Presidential Declaration of a Major Disaster and Notification.** The President of the United States is authorized to provide benefit assistance to individuals unemployed as a result of a major disaster. The President declares that a major disaster exists at the request of the Governor of the affected State and authorizes: 1) the type(s) of Federal assistance to be made available, and 2) the geographic areas that have been adversely affected by the disaster. The Presidential declaration may authorize Individual Assistance (IA), which includes the provisions for DUA, to families and individuals. When the President declares that a major disaster exists in a State, the Governor of such State is notified by written communication.

Upon issuance of the Presidential declaration, the FEMA makes appropriate notification of the declaration to the affected public. Notice that the President has declared a major disaster in a State, the declaration date, the areas that have been adversely affected by the disaster, the type(s) of Federal assistance to be provided, the beginning date of the disaster, and the disaster number are published in the Federal Register. In addition, any amendments to the original disaster declaration are published in the Federal Register.

**8. Date the Major Disaster Began.** The date the major disaster began, sometimes referred to as the "disaster date", is the date the major disaster first occurred. This date is specified in the Presidential declaration and published in the Federal Register. This date is established in the Federal-State agreement between the Administrator, FEMA, and the Governor of the State in which the major disaster occurred, and communicated in writing by the FEMA to the U.S. Department of Labor. The date is defined in 20 CFR 625.2(e) of the DUA regulations.

**9. Disaster Assistance Period.**

**a. Uniform Disaster Assistance Period.** A uniform disaster assistance period will begin with the first week following the date the major disaster began, and will end with the last week that begins (week as defined in State law) prior to 26 weeks after the date the major disaster was declared. DUA will not be paid for any period of unemployment that occurs prior to the disaster date nor for a week of unemployment which begins subsequent to the last date of the disaster assistance period. Two clarifications are necessary under this section:

(1) A week in the definition of Disaster Assistance Period is a "week" under the applicable State law.

(2) There is no statutory limitation on the number of weeks in a Disaster Assistance Period. A Disaster Assistance Period, during which DUA may be payable to an individual may exceed 26 weeks, which is different than under most State unemployment compensation program. This is possible when the disaster declaration is delayed for whatever reason. See example below.

**Examples:**

Date Disaster Began	Date Declared	Disaster Assistance Period Week Begins*	Disaster Assistance Period Week Ends*	Total Wks
08/29/2005	08/29/005	09/04/2005 (Sun.)	03/04/2006 (Sat.)	26
10/17/2005	11/07/2005	10/23/2005 (Sun.)	05/13/2006 (Sat.)	29

\*State UI law defines "week" as a calendar week in all States, except for New York.

**b. Subsequent Disaster Assistance Period.** Each declared disaster creates a specific disaster assistance period. The designation of a subsequent disaster assistance period applies when there is an existing disaster assistance period in a State and a second disaster is declared that affects an individual who had returned to work and again becomes unemployed as a result of the subsequent declared disaster. In such instances, DUA is not payable to the individual based on the initial disaster. Applications resulting from the subsequent disaster must be determined under the requirements for the subsequent disaster.

## REGIONAL COORDINATION

### 10. Regional Office Coordination of DUA Program.

**a. Appointment of Regional DUA Coordinator.** The Regional Administrator shall assure that at all times an individual Regional Office staff member is designated and fully prepared to function as the Regional DUA Coordinator to assist FEMA and the States in administering the DUA program.

**b. Responsibilities of the Regional DUA Coordinator.** When DUA is approved, the Regional DUA Coordinator will:

- (1) Notify the State that there is a declaration by the President that a major disaster has occurred.
- (2) Ensure that States make an overall estimate of the number, type (farm, factory, etc.) and the duration of unemployment that is the direct result of the disaster.
- (3) Review and coordinate with the Regional FEMA representative funding estimates prepared by States for the disaster.
- (4) Coordinate the timely issuance of obligational authority to States from the Regional office upon Regional Office receipt of funding allocations.
- (5) Ensure that States have all applicable fiscal and statistical reporting instructions, and copies of this Handbook.



- (6) Review reporting requirements with States, with particular attention given to their timely submittal.
- (7) Review all reports sent to the Regional Office during the disaster assistance period for accuracy and completeness, and ensure their prompt distribution according to existing procedures and special needs. A reminder notice should be sent to State officials of the requirement for a final report when a disaster assistance period is over or when monthly reports indicate that activity has ceased.
- (8) Review the forms/operating procedures and current procedural releases issued by States to ensure proper State administration of the DUA program.
- (9) Ensure that determinations and payment of DUA are made according to DUA procedures and the Secretary's current regulations.
- (10) Conduct onsite visits to the States during initial application period, as appropriate.

Emphasis should be given to the proper and prompt determination of entitlement and payments to eligible applicants as well as accurate reporting of DUA activities.

## **S**STATE RESPONSIBILITIES

### **11. State Administrative Responsibilities.**

**a. Appointment of State DUA Coordinator.** Each State should designate a DUA program coordinator to ensure that the provisions of Sections 410 and 423 of the Stafford Act are promptly carried out and to provide an effective liaison with both the Regional Office DUA Coordinator and the FEMA Regional Coordinator during the period of the disaster. It is recommended that the State DUA Coordinator also serve as liaison with the State Emergency Management Agency. The Employment and Training Administration (ETA) Regional Administrator should be promptly informed of the identity of the Coordinator and of any change that occurs.

**b. Responsibilities of the State DUA Coordinator.** When DUA availability is approved, the State DUA Coordinator will:

- (1) Notify appropriate State agency staff that the Governor's request for the President to declare that a major disaster exists in the State has been approved upon receipt of information from the ETA RO or other verifiable sources. Ensure that media notification of the availability of DUA is promptly released.
- (2) Ensure that the State agency makes an overall estimate of the number, type (farm, factory, etc.) and the duration of unemployment that is the direct result of the disaster.
- (3) Review and coordinate with the Regional DUA Coordinator funding estimates prepared by the State for the disaster.
- (4) Ensure that appropriate State agency staff have all applicable fiscal and statistical reporting instructions, and copies of this Handbook.

- (5) Review the reporting requirements with the responsible State agency staff, with particular attention given to timely submittal.
- (6) Review all State agency reports to be sent to the Regional Office or National Office during the disaster assistance period for accuracy and completeness, and ensure their prompt distribution according to existing procedures and special needs.
- (7) Review the forms/operating procedures and current procedural releases issued by the State agency to ensure proper State administration of the DUA program.
- (8) Ensure that determinations and payment of DUA are made according to DUA procedures and the current DUA regulations.
- (9) Conduct reviews of the DUA claimstaking process, as appropriate. Emphasis should be given to the proper and prompt determination of entitlement and payments to eligible applicants.

**c. State Agency Announcement of DUA Availability.** For the DUA program to be effective, all potentially eligible individuals must be made aware of the availability of DUA. When the Presidential declaration is issued, the State should promptly announce that individuals, including unemployed self-employed individuals, who were living or working in the affected areas at the time of the major disaster, and who are unemployed as a result of the major disaster, may be eligible for DUA. This announcement should be made through appropriate news media, website posting in the State, including newspapers, radio and television, as directed under 20 CFR, section 625.17. The announcement should specify that, in addition to individuals who lost their jobs directly due to the disaster, individuals eligible for DUA may also include: (1) individuals who are unable to reach their job or self-employment location because they must travel through the affected area and are prevented from doing so by the disaster, (2) individuals who were to commence employment or self-employment but were prevented by the disaster, (3) individuals who became the breadwinner or major support for a household because of the death of the head of household due to the disaster, or (4) individuals who cannot work or perform services in self-employment because of an injury caused as a direct result of the disaster. In addition, the State agency, in its announcement, should advise individuals that their unemployment is a direct result of the major disaster if the unemployment resulted from: (1) the physical damage or destruction of the place of employment; (2) the physical inaccessibility of the place of employment due to its closure by the federal, state, or local government in immediate response to the disaster; or (3) lack of work, or loss of revenues, if, prior to the disaster, the employer or self-employed business received at least a majority of its revenue or income from an entity in the major disaster area that was damaged or destroyed in the disaster or an entity in the major disaster area closed by the federal, state, or local government.

The announcement should also indicate how individuals should file applications (e.g., telephone, internet, in-person, or mail), where any further information may be obtained and what additional information is needed or should be available at the time of filing. Also, they will tell of application deadlines and that claimants should file as soon as possible. (This additional information will include a Social Security Number and, if possible, any documents that show earnings and employment for the tax year that ended prior to the individual's unemployment as a result of the major disaster.) In addition, the announcement should explain the role of the State in providing reemployment services to individuals who have lost their employment, as well as the role of the State in providing DUA.

In States where all media releases are required to be issued through the Governor's office, the State agency must ensure such releases contain all the necessary information discussed above and required by 20 CFR 625.17. A general announcement by the Governor that a major disaster has been declared and

the availability of certain programs (including DUA) does not meet the requirements. Also, the requirements are not met with a release issued by the FEMA on filing applications for various forms of assistance and locations for filing or use of FEMA's toll free "800" number.

- (1) **“Amended Declaration” Announcement.** If the Presidential declaration is later amended to include additional areas or counties, another release should be prepared and directed to affected workers, as described above, in these areas added by amendment(s). Prompt and effective publicity is important to contend with allegations by late filing applicants that they were not aware of the program or the “30-day filing period”. If there are amendments to the initial declaration, the application periods will vary and some DUA applicants will have different 30-day filing periods. Each filing period is separate and distinct and cannot be combined in any way to be considered an extension of one or any other filing period. Each amendment to a declaration, which adds additional jurisdictions, is treated as a separate filing period, not an extension. Therefore, each announcement release begins and ends a new and separate 30-day filing period. Since different workers are covered under each amended declaration, this permits DUA applicants to be treated fairly by allowing all affected workers to have the same number of days (30) to file an initial claim and thus eliminates disparate treatment of individuals.

**“Ending of Filing Period” Announcement.** On or about the 20th day of the filing period, but no later than the 25th day, additional publicity should be provided to advise individuals of the deadline for filing initial applications. While this is recommended as a good administrative practice, it is not mandatory and there may be instances where the State agency will determine there is little value to such announcement. For example, when there has been no or little DUA workload and an additional announcement would not be beneficial, or in cases where there have been blanket extensions approved and announced, it may result in confusion to further announce an ending date.

**d. Special Notifications.** In areas where there are large concentrations of **migrant workers or commuters**, and as warranted by conditions, States may contact other States and should make special efforts to inform applicants of their possible eligibility for DUA through bilingual news releases, crew leaders, foremen, family heads, or employers. In regard to **self-employed farmers**, it may be necessary to contact and provide information to local farm organizations and Department of Agriculture offices serving the affected counties. In addition, States may consider contacting other States which refer migrant workers for employment as to the extent of the major disaster and of those migrant workers’ potential eligibility for DUA and their employment opportunities.

In addition, as **another source of notification**, FEMA’s National Processing Service Centers (NPSC) (800 number teleregistration) can provide **name and address labels** of applicants who indicated, at the time of FEMA teleregistration, that they or a member of their household was unemployed as a result of the disaster. State agencies **may request** such **labels when** it is **determined** such labels would be **beneficial**. The need for utilizing such labels to assist in notification would depend on the scope of the disaster and response of individuals to other forms of notification. The response to FEMA’s question may include individuals not unemployed as a direct result of the disaster or for other reasons.

Any **request** for labels **shall not occur until 7-10 days** have lapsed since the State agency announcement of the disaster. The State agency request must be made through the FEMA DUA Program Coordinator for the disaster. This Coordinator will contact the Computer Operations Chief at an appropriate NPSC to run the **list as of the 14th day** after the State agency announcement date. The labels will be sent directly to the designated State agency point of contact. The State agency will, in turn, utilize the labels to notify individuals of the availability of DUA.

State agencies should **bear in mind the 30-day filing period** for DUA **when utilizing the labels**. The fact that an individual files after the 30th day in response to a mailing label notification does not automatically mean such individual had good cause for late filing. For example, if an individual was aware of the DUA program from other sources, but did not timely file an application, then waited until after the 30th day to file in response to a label notification, such individual would not have good cause for late filing.

**e. Application Period.** In accordance with 20 CFR 625.8(a) of the DUA regulations, States must accept as timely initial applications filed within the "30-day application period" beginning with the first day following the date of the State announcement of the availability of DUA. States may accept as timely an initial application filed later than 30 days after the announcement date if the State determines that the applicant had good cause for the late filing. [Good cause must be determined on an individual basis. In general, when the state has publicly announced the availability of DUA assistance through appropriate news media as directed under 20 CFR, Section 625.17, a reasonable basis on which to justify good cause due to ignorance of the program must be well documented. Therefore, all publicity should emphasize the need for prompt filing prior to the deadline date]. Under no circumstances is an initial application acceptable as timely if it is filed after the expiration of the Disaster Assistance Period. If the deadline date falls on a week-end or holiday, the date is extended to the next business day the State agency is open.

At the request of the State agency, for good cause, the 30-day deadline might be uniformly extended by the Department for all DUA applicants filing in certain jurisdictions of the State.

The request should be made prior to the end of the 30-day period. The request must include a detailed justification of the need for a blanket extension (e.g., offices closed, roads destroyed, media outlets for notification out of business in the disaster area or individuals had no postal or communications capability, etc.). Under no circumstance may any extension of the filing period be granted by the Department after the expiration of the Disaster Assistance Period.

**f. Operating Forms and Procedures.** In the implementation of the DUA program, State agencies must develop necessary operating procedures, instructions, and forms. Copies of this material, whenever issued or revised, as well as copies of all publicity material and press releases should be promptly forwarded to the DUA Regional Coordinator. States may redesign the forms contained in this Handbook (*See Appendix F*) to fit the needs of its automated system environment, or may use the State unemployment compensation forms as long as essential information, as set forth below, is obtained and the form clearly indicates that it is being utilized for DUA.

In addition to the standard claimant identification and employment information required for unemployment compensation applications, the DUA application must contain the FEMA designated identification number of the disaster. The initial application must also solicit information pertaining to citizenship and alien status, child support owed, food stamps overissuance owed (if required by State law), ethnic identification, and Federal income tax withholding election and State and/or local income tax withholding election (if required by State law).

The State may also use a State designed form to notify applicants of claims determinations (such as a reduction of the weekly amount or denial of a DUA week claimed) if the form clearly identifies that it is a DUA denial and conveys the correct DUA appeal provisions (20 CFR 625.10)

In those States requiring a request for reconsideration prior to appeal, the notice or determination must convey appropriate information to request such an action. All State designed forms must be submitted to the appropriate Regional Office for review and approval.

**g. Payment Controls.** The State should establish controls and apply the eligibility provisions of the DUA regulations to each applicant to ensure that DUA payments are made only to an individual who is an unemployed worker or an unemployed self-employed individual as defined at 20 CFR 625.2 and that the unemployment is caused by a major disaster as provided in 20 CFR 625.5.

At the time of initial application or fact-finding interview, the State should obtain all information necessary to determine the applicant's eligibility for DUA. (See 20 CFR Part 625, Appendix B: Standard for Claim Determinations). The State should investigate to find out all relevant facts and use special handling of claims when necessary and refer to the DUA resource materials such as the Handbook and other directives. The State should ensure that staff are fully trained in administering the DUA law, regulations, and payment activities.

**h. Disclosure of Information.** Information in State records compiled and maintained in administering the DUA program will be kept confidential. Information in such records may be disclosed only in the same manner and to the same extent as information with respect to unemployment compensation may be disclosed under the applicable State law. This provision on the confidentiality of information obtained in the administration of the Stafford Act will not apply, however, to the U.S. Department of Labor, or in the case of information, reports and studies requested pursuant to 20 CFR 625.19, or under 26 U.S.C. 6109(d) for purposes of reporting DUA as Federal taxable income and for determining any entitlement to DUA.

## RECORDS

### 12. Record Keeping, Retention and Disposal

**a. Record Keeping and Record Retention.** Each State agency shall compile and maintain records pertaining to the administration of the DUA program as the Secretary requires, and make all records available for inspection, examination, and audit by such Federal officials or employees as the Secretary may designate, or as may be required by law. Refer to 29 CFR 97.42, Retention and Access Requirements, for reports and records. Generally, the regulations and these instructions (based on the Employment Security Manual, Part V, Sections 9193 and 9194) provide that original records will be transferred to State agency retained three (3) years after final action, including appeal and court actions, on the claim. Records may be transferred in less than the 3-year period if microphoto-copied or stored using other technological means in accordance with the standards published in paragraph c., below. With respect to overpayment records, fraudulent or nonfraudulent, the date the overpayment is paid by the claimant is considered to be the date on which final action took place. DUA records include:

- (1) Individual DUA files consisting of initial applications and continued claims for DUA, determinations of entitlement, reports of interviews, and other related documents, records and correspondence;
- (2) Appeal records consisting of requests for hearings and appeals protesting DUA determinations, copies of subpoenas, notices and transcripts of hearings, exhibits, decisions, and other related documents, records and correspondence;
- (3) DUA payment records consisting of transcripts of benefit histories; canceled checks, copies of checks and check registers or similar controls, records of overpayments, underpayments, and adjustments and other related documents, records and correspondence; and,
- (4) Individual DUA records and files relating to administrative penalties and criminal prosecution in cases of fraudulent claims.

**b. Disposal of DUA Records.** After records are transferred to State accountability, a State agency will follow its State law for disposal of records.

**c. Standards for Microphotographing Records.** The following standards apply to microphotography of DUA records. When reproducing permanently valuable records, to dispose of the originals--

(1) The integrity of the original records will be preserved on the copies. This means that the copies will be adequate substitutes for the original records in serving the purposes for which such records were created and maintained. Specifically, the term "integrity of the records" means:

(a) The copies will be so arranged, identified and indexed that an individual document or component or record series can be located with reasonable facility;

(b) The copies will contain all significant record details for probable future reference;

(c) The file stock used in making photographic or micro-photographic copies, and their processing, will comply with the appropriate specifications for permanent records;

(d) The provisions for preserving, examining, reproducing, and using the copies of the original records will be adequate;

(e) Whenever the agency determines or discovers that the original photographic negative or master reproducing copy of permanently valuable records is deteriorating or will deteriorate as a result of use or other causes, the agency will make a duplicate copy for its own use; and

(f) Positive microfilm remains preserved without defects occasionally found on negative microfilm. Therefore, State agencies are urged to examine their stored microfilm, especially negatives, on a sample basis to determine if any defects have developed.

**d. Other Storage Mediums.** States may also utilize any other advanced medium for retaining records, such as laser disc, or other electronic imaging method, as long as the image of the hard copy documents utilized by the State agency for an individual applying for DUA can be viewed and/or printed (reproduced). The standards for microphotography, discussed in paragraph c. above, apply to any electronic imaging medium.

UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK**GENERAL PROVISIONS****I**NTRODUCTION

**1. Relationship of Unemployment Compensation (UC) to DUA.** The first line of defense to an individual's unemployment due to a disaster is the unemployment compensation program. Section 410(a) of the Stafford Act prohibits the payment of DUA for any week of unemployment for which an unemployed individual qualifies for unemployment compensation or waiting period credit under any Federal or State law. The purpose of the DUA program is to provide unemployment assistance to those individuals who become unemployed or cannot commence employment as a direct result of a major disaster but are not covered under the Federal or State UC programs. Therefore, DUA is not payable in lieu of, or in addition to, UC.

**E**LIGIBILITY

**2. General DUA Eligibility Requirements.** DUA payments are designed to provide assistance to the individual who is unemployed as a result of a declared disaster and is not eligible for unemployment compensation but meets the DUA qualifying requirements. DUA is not payable as a supplement to unemployment compensation for the same week of unemployment, nor is it payable for any unemployment compensation waiting period required under State UC law. Like the unemployment compensation program, the DUA program is designed to provide temporary partial income replacement so that the individual unemployed as a result of a declared disaster can provide for the necessities of living. DUA is not designed to provide 100 percent income replacement or to ameliorate business losses to self-employed individuals who suffer such losses due to a disaster.

In order to qualify for DUA, individuals must be unemployed or partially unemployed at their on-going employment or self-employment as a direct result of the major disaster or must be prevented from commencing employment or self-employment. This includes individuals who reside in the major disaster area but are unable to reach their place of employment or self-employment outside of the major disaster area, and individuals who must travel through a major disaster area to their employment or self-employment, but who are unable to do so as a direct result of the major disaster. When a major disaster occurs that directly prevents an individual from performing services, i.e., meeting one or more of the causes of unemployment set out in 20CFR 625.5, the individual should not be denied eligibility simply because he/she actually worked outside the major disaster area or was to commence work outside the disaster area.

These eligibility considerations are also applicable to individuals becoming new breadwinners as a direct result of the disaster. In making eligibility determination pertaining to individuals who must travel out of or through the disaster area, the State will consider factors such as alternate means of transportation, other routes to work where the major disaster has disrupted the usual and/or shortest route, commuting patterns in the area, and the reasonableness of utilizing such alternatives to continue employment or self-employment.

**a. Unemployed Worker.** For DUA purposes, an unemployed worker is one who worked in or was scheduled to begin work in the major disaster area at the time of the major disaster and whose principal source of income and livelihood is dependent upon the worker's employment for wages. Such worker's full or partial unemployment will be considered to be caused by the major disaster if, as a direct result of a disaster, the worker:

- (1) has a "week of unemployment" as defined in 20 CFR 625.2(w)(1) following the "date the major disaster began" as defined in 20 CFR 625.2(e); or
- (2) is unable to reach the place of employment, or
- (3) was to have started work and does not have the job or is unable to reach the job, or
- (4) an individual has become the breadwinner or major support for a household because the head of household died as a direct result of the major disaster<sup>1</sup>, or
- (5) cannot work because of an injury caused as a direct result of the major disaster.

Unless a worker meets one of these criteria, such worker will not be considered unemployed due to the major disaster and, therefore, not eligible for DUA.

**b. Unemployed Self-Employed Individual.** For purposes of DUA, an unemployed self-employed individual is an individual who was employed in or was to commence employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in 20 CFR 625.5(b). The unemployment of an unemployed self-employed individual is caused by a major disaster if:

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<sup>1</sup> In order for an individual who has become the breadwinner or major support for a household, because the head of the household has died as a direct result of the major disaster, to be considered an "unemployed worker" for DUA purposes, the individual generally shares the same household with the head of household and is related by blood, marriage, adoption, or other legal arrangement to the head of the household. Additionally, the deceased head of household must have provided, through employment for wages or self-employment, one-half or more of the household income or means of livelihood during the base period utilized for purposes of computing a DUA weekly amount under 20CFR625.6, or would have provided such income but for unemployment during the base period.



- (1) the individual has a "week of unemployment" as defined in 20 CFR 625.2(w)(2) following the "date the major disaster began" as defined in 625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) the individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or
- (3) the individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or
- (4) the individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

Unless a self-employed individual meets one of these criteria, such individual will not be considered unemployed due to the major disaster and, therefore, not eligible for DUA.

In some cases self-employed individuals can be substantially impacted by a major disaster even though they are still able to perform some of their customary services in self-employment. Such individuals, for example, diversified farmers can be eligible for partial DUA payments even if they are still able to render some of their customary services in self-employment. The determination of eligibility will be based on the individual performing less than his full time customary services and earning wages less than the applicable state law earnings limit. Likewise, a farmer may elect to grow an alternate crop rather than his/her customary crop due to a disaster shortened growing period. Eligibility must be based on the hours of work required each week for growing an alternate crop compared to the usual and customary hours for growing the farmer's customary crop.

It should be noted that restorative or clean-up work which is necessary because of the disaster will not make an individual ineligible for DUA. Also, "salvaging" or other limited self-employment activity alone would not necessarily make an individual ineligible for DUA if the individual performs customary services less than full time and did not have earnings exceeding the states earnings limitation. However, the full range of an individual's activities must be considered in making an eligibility determination; for example, in the case of a farmer, whether the farmer not only is performing clean-up work but also has resumed normal plowing and planting activities is an important factor. If so is an important factor, the individual would no longer be eligible for DUA. Each individual's situation must be evaluated on its own facts.

## **D**IRECT RESULT

**c. Unemployment is a direct result of the major disaster.** When considering the reasons for unemployment in paragraphs a. or b. above, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not a result of a longer chain of events hastened by the disaster or having a ripple effect throughout the economy. An individual's unemployment is a direct result of the major disaster if it resulted from:

- (1) the physical damage or destruction of the place of employment;
- (2) the physical inaccessibility of the place of employment in the disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster, or
- (3) lack of work, or loss of revenues, by an employer or self-employed individual, of at least a majority of its revenue or income from an entity that was either damaged or destroyed in the disaster or an entity in the major disaster area closed by the federal, state or local government.

**d. Direct Causes of Unemployment.** Initial and continuing eligibility for DUA depends on a finding that the individual is an unemployed worker or unemployed self-employed individual whose partial or total unemployment is a direct result of the major disaster. The unemployment of the individual must occur on or after the beginning date of the disaster and be a direct result of the disaster. The unemployment can occur after the ending date of an incident period determined by FEMA (the ending date of the incident or cause of the disaster), but still be a direct result of the major disaster. Included in the definitions of unemployed worker and unemployed self-employed individual are individuals who were to commence employment or self-employment in or outside the major disaster area at the time the major disaster began and are prevented from doing so by the disaster. The definitions also includes individuals who reside in the major disaster area but are unable to reach their place of employment or self-employment outside of the major disaster area; and individuals who must travel through a major disaster area to their employment or self-employment, but are unable to do so as a direct result of the major disaster; or employed or self-employed individuals who were injured as a direct result of the disaster or a visitor or tourist who were in the disaster area at the time of the disaster and were injured and unable to return to work outside of the disaster area.

DUA is payable only for a week of unemployment, during the disaster assistance period, that continues to be the direct result of the major disaster. Therefore, if the State agency finds a DUA applicant has failed, without good cause, to accept a referral to suitable work, or is not able and available for work for reasons not due to the major disaster, or whose unemployment for any other reason can no longer be directly attributable to the major disaster, the applicant is no longer unemployed as a direct result of the disaster and DUA eligibility must be terminated.

In some cases, industry experts can be consulted in evaluation DUA claims and making determinations. In the case of agricultural farming industry workers and the self-employed, personnel versed in rural program matters at both the State and County levels, such as County Extension Agents and State Department of Agriculture staff or staff located at the State land grant college could be consulted. In the case of other agricultural industry, professional or technical staff working in that industry should be familiar with the nature and extent of damage that has resulted in varying periods of unemployment. Their assistance should be helpful in determining the duration of unemployment that can be considered attributable to the major disaster.

As an example, agricultural industry workers or self-employed individuals are not eligible for DUA for any period(s) such individuals are customarily not working, and industry experts can advise when that is the case regarding these DUA claimants. During the disaster assistance period these individuals may move in and out of weeks of DUA eligibility several times. Claims operations should be carefully coordinated with agricultural industry information. Other industry groups may need to be consulted in non-agricultural disaster situations. For example, tourist industry associations can be consulted in the case of a disaster causing a decline in tourist visiting an area.

Individuals cease to be eligible for DUA when their partial or total unemployment is no longer caused by the major disaster, or when they fully resume their customary services in self-employment or otherwise are no longer partially or part-totally unemployed as required by 20 CFR 625.2(w).

**e. DUA Eligibility and Special Self-Employed Examples.** In order for any self-employed individual to establish eligibility for full or partial DUA, the State must determine that: 1) the individual, as a direct result of the disaster, has a week of total, part-total or partial unemployment as defined in 20 CFR 625.2(w)(2); and 2) the individual's unemployment is a direct result of the disaster, particularly, because of lack of work or loss of revenues the individual or business received a majority of its revenue or income from an entity in the major disaster area as set forth in 20 CFR 625.5(c). As soon as such individual can fully resume his/her customary hours or services in self-employment or has earnings not exceeding the earnings allowance prescribed in the applicable state law, he/she is no longer eligible for DUA. In addition, as soon as an individual determined eligible because he/she lost over a majority of his/her income as a direct result of the disaster, returns to work and starts earning income equal to his/her pre-disaster level, the individual can no longer be considered unemployed as a direct result of the disaster. Each self-employed individual's situation needs to be evaluated on a case-by-case basis taking these factors into account. As examples:

- (1) An individual operates a service business out of his/her home that is located in an affected county as defined in the declaration. The home business is the individual's primary source of income. The flood which is declared a major disaster damages part of the individual's home office operation. The individual is not eligible for UC, but is awarded DUA. In the eighth week, the individual has completed clean up of his/her home office and replaced any damaged equipment and is able to again provide full-time services. The individual ceases to be eligible for DUA in eighth week.
- (2) The same scenario as in (1) above, but as a direct result of the disaster, there are not sufficient customers utilizing the service, causing the individual to work less than his/her usual and customary hours. The individual continues to be eligible for DUA until there are enough customers in a week to warrant the claimant resuming pre-disaster full-time hours work.
- (3) The individual operates a day care center with 6 children. As a direct result of the disaster, four of the children are unable to reach the day care center. Since the individual has lost his/her customers, he/she could be considered unemployed directly due to the disaster only if such individual could not perform his/her usual and customary services. It is likely that continuing to take care of 2 children may require full-time services and if so, the claimant would not meet the able and available eligibility requirements under 20 CFR 625.4 and would not have a "week of unemployment".
- (4) A farmer who harvests a limited portion of his crop via salvaging over a brief one or two-week period, could resume or start DUA weekly payments after the termination of salvaging operations.

- (5) A taxi driver loses a majority of income (over 50 percent) as a direct result of the disaster. The individual will remain unemployed and potentially eligible for DUA until full-time hours are again reached by the individual or his/her income reaches the pre-disaster level. For example, if an individual had \$500 earnings per week of which \$300 were lost as a direct result of the disaster, he/she would remain unemployed until full-time hours were reached or \$500 in earnings is reached (or whenever the amount exceeded the earnings allowance under the state law). If the individual's hours are less than full-time, earnings up to the earnings allowance under the state's law would be deductible under state law provisions governing the earnings allowance for partial and part-total employment. (*See 20 CFR 625.6(f)*).

## SPECIAL APPLICANTS

**f. Migrant Workers.** In general, a migrant worker unemployed as a result of a major disaster is an individual who worked (or was scheduled to work) as an employee in the major disaster area at the time of such major disaster and, due directly to the major disaster, no longer has a job, or cannot reach the place of work, or cannot perform the job because of damage to the place of work. For example: Floods are declared as a major disaster in March, and DUA is included in the declaration. The planting season for corn begins in March. Migrant seasonal farm workers typically assist in the planting of corn in an area declared as affected by the disaster. These farm workers are prevented from their normal planting activities because of the rains and floods in March and, therefore, are potentially eligible for DUA. Agricultural and other workers whose normal work depends upon movement from one area to another will be deemed living in the major disaster area for the purposes of DUA if their presence in such disaster area is consistent with the normal or reasonable migration required by their usual occupation. Applications filed by such workers require special fact-finding. In completing initial applications, the names and addresses of the most recent and base period employers should be obtained.

**(1) Benefit Duration.** Because of the seasonal aspect of their employment, eligible migrant workers may be paid DUA only for those weeks that they would have been employed except for the fact that a major disaster intervened. DUA is payable to an applicant for a week of unemployment if with respect to such week the applicant's unemployment is found to be the result of the major disaster. Thus, a worker whose employment at the time of the major disaster would have continued for another 4 weeks and then be terminated, would be potentially entitled to DUA for this period of time if the major disaster interrupted such employment and prevented the worker from continuing to work during the 4-week period. Circumstances will vary in individual cases and will require necessary fact-finding at the local office level. Before establishing entitlement, the date the applicant would have started work, except for the major disaster, and the probable duration of the employment should be verified to the extent possible.

**g. Seasonal Workers.** Other unemployed individuals who are normally employed in an industry where, because of climatic conditions or the seasonal nature of the employment, the industry operates only during a regularly recurring period or periods, may be eligible for DUA during such periods. The loss of such potential employment or self-employment may provide the basis for DUA eligibility to such individual for the period the individual would be working except for the major disaster. If at the time of the major disaster, the individual was employed, self-employed or scheduled to begin work in the major disaster area, and due directly to the disaster, no longer has a job or cannot reach the place of employment, DUA may be payable to such individual.

**(1) Benefit Duration.** Because of the seasonal aspect of their employment, seasonal workers may be paid DUA only for those weeks that they would have been employed except for the fact that a major disaster intervened. DUA is payable to an applicant for a week of unemployment if with respect to such week the applicant's unemployment is found to be the direct result of the major disaster. Thus, a worker whose employment at the time of the major disaster would have continued for another 4 weeks and then be terminated, would be entitled to DUA for this period of time if the major disaster interrupted such employment and prevented the worker from continuing to work during the 4-week period.

Circumstances will vary in individual cases and will require necessary fact-finding at the local office level.

**h. School Employees.** 20 CFR 625.6(a)(1) of the DUA Regulations provides (in computing the weekly DUA amount) that, "...qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied,...., but shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law..."

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(6)(A)(ii)), provides that wages earned or paid for services performed in an instructional, research or principal administrative capacity for an educational institution, shall not be used to determine monetary entitlement under certain conditions. FUTA permits wages earned or paid for services performed in any other capacity for an educational institution to be denied according to state law.

Accordingly, employment and wages earned by certain school employees or persons employed under the educational system may not be used as the basis for UC eligibility during specified periods (e.g. summer recess, winter break). Therefore, in accordance with the requirements of 20 CFR 625.6, employment and wages earned by certain school employees or persons employed under the educational system may not be used as the basis for DUA eligibility during the periods specified in Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (26 U.S.C.3304(a)(6)(A)).

**i. Full-Time Students.** Initial applications filed by full-time students must be given careful consideration when determining whether or not they are unemployed due to the major disaster within the meaning of the DUA provisions. The major objective of the DUA program is to help those individuals whose primary income and livelihood is dependent upon the performance of services for another or in self-employment, and who have suffered the loss or interruption of such means of livelihood as the result of a major disaster. However, the Department also recognizes that members of a family under the age of majority often perform services in employment and self-employment for families or family businesses, particularly in the agricultural industry. Such employment or self-employment is usually performed during periods such individuals are not attending school and may be full-time during vacation or between term periods, and part-time or not at all during times that school is in session.

The fact that such individuals are under the age of majority does not, in itself, mean these individuals are not entitled to DUA. These individuals would be entitled to DUA if they meet the definition of unemployed worker or unemployed self-employed individual at 20 CFR 625.2(s) and (t) and the eligibility requirements for a week of unemployment in 20 CFR 625.4. This objective is in accordance with the apparent Congressional intent as expressed in the Committee report when the DUA provisions were first enacted in 1969:

"The purpose of this section is to enable compensation to be paid to those few persons who might lose their livelihood because of destruction wrought in a major disaster . . . ."

This intent has generally been interpreted to require that the individual's activities, the loss of which is claimed to have resulted in unemployment, must have been the individual's principal source of income and means of livelihood.

Earnings of full-time students who work part-time or who assist in the operation of the business or farm frequently represents only incidental income rather than the principal means of their livelihood. Applicants of this type are primarily students attending school on a full-time basis, not persons who have suffered the loss of their livelihood. Within the meaning of the DUA provisions, they would not be considered to be unemployed due to the major disaster and eligible for DUA simply because their source of incidental income while attending school was interrupted.

**j. Aliens.** Any individual, in order to be considered eligible for DUA for a week, must be able and available for work within the meaning of the applicable State law. This able and available requirement pertains to all applicants for DUA, including aliens.<sup>2</sup>

Congress' concern with the payment of benefits to certain aliens is expressed in two other provisions of Federal unemployment compensation law. Section 303(f) of the Social Security Act (SSA) requires States to administer an income and eligibility verification system which meets the requirement of Section 1137 of the SSA. Section 1137(d) of the SSA provides that, as a condition of eligibility for unemployment compensation, a State shall require each individual to sign a declaration, under penalty of perjury, whether the individual is a citizen or national of the United States, and, if not, whether he/she is in "satisfactory immigration status." If the alien is denied because they are not in satisfactory immigration status, as verified with the Immigration Naturalization Service, the right to a fair hearing is provided the alien. In addition, Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (commonly called the Welfare Reform Act), provides that Federal unemployment compensation, which includes DUA, is a federal public benefit. In order to be eligible for a federal public benefit (DUA) an individual must be a "qualified alien" as defined in the Act.

Under both the Section 1137(d) and the Welfare Reform Act an alien must be a qualified alien in satisfactory immigration status. As set forth in Chapter III, Section 3.d., of this Handbook, State agencies must verify the status of every individual applying for DUA who indicates on the initial application for DUA that he/she is **not a U.S. citizen**. Personnel of the INS at both the regional and State levels are versed in verification of employment eligibility, if questions should arise.

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<sup>2</sup> The Department addressed the availability requirement for unemployment compensation as it pertains to aliens in UIPL 1-86 (51 FR 29713, August 20, 1986) and UIPLs 12-87 (54 FR 10102), and 12-87, Change 1 (54 FR 10113) and 6-89 (54 FR 10116) all published on March 9, 1989. A discussion of the application of the able and available requirement was provided in the preamble to the final rule published on May 16, 1991 (56 FR 22800). The Department stated in these documents that an alien must be authorized to work by the Immigration and Naturalization Service (INS) to be available for work.

**3. Reemployment Assistance Service.** Section 410(b) of the Stafford Act as amended provides that a "State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section." Subsection 410(b)(2) provides that "[t]he President may provide [Federal] reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services." All applicants as well as any other individuals who are unemployed as the result of such disaster must be afforded employment services (including counseling and referrals to suitable work opportunities and suitable training) to assist them in obtaining suitable work as soon as possible.

## STATE LAW USES

**4. Applicability of State Law Provisions.** The applicable State for an individual is the State in which the individual's unemployment is the result of the major disaster (*See 20 CFR 625.12*). As specifically set forth at 20 CFR 625.11, the **terms and conditions of the State law** of the applicable State for an individual, which apply to claims for, and the payment of, regular compensation, **shall apply to** applications for, and the payment of, **DUA** to each such individual **only as specifically set forth in the DUA regulations**, and subject to the following limitations: (1) only pursuant to an Agreement entered in accordance with the Stafford Act and Part 625 of the Code of Federal Regulations, and with respect to weeks in which the Agreement is in effect; and (2) only with respect to weeks of unemployment that begin during a Disaster Assistance Period.

**5. Able and Available for Work.** An applicant must be able to work and available for work according to State law requirements but if the applicant's inability to work is the result of an injury caused by the major disaster, the applicant will be deemed to meet this requirement. An unemployed self-employed applicant will not be considered unavailable for work if he or she is engaged in activities solely for the purpose of resuming self-employment. (*See 20 CFR 625.4(g)*.)

When the State agency receives information from an applicant which indicates that the applicant has become disabled and this disability is not due to the major disaster, the State agency will apply the able and available provisions of the applicable State law for the period of the disability. If the State agency determines the applicant is not able and available, the applicant will not be eligible for DUA during the period of the disability. The applicant will be notified of the determination and the right of appeal.

**6. Suitable Work.** For the purposes of eligibility to receive DUA, in determining whether work is suitable, the suitability criteria in the State unemployment compensation law, including the labor standards provisions required by Section 3304(a)(5) of the FUTA, will be used. Once an individual obtains suitable employment, he/she is no longer eligible for DUA. Employment in a Federal, State or locally funded temporary job designed to assist in clean-up or other activities to enable the community to recover from the effects of the major disaster is not employment that renders the individual ineligible for further DUA once the temporary job ends. Such temporary employment is not considered to be a return to suitable employment.

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## INITIAL APPLICATIONS

**I**NTRODUCTION

**1. Initial Applications.** The DUA regulations at 20 CFR 625.8, provides that applications will be filed at such time, in such place, and in such a manner as directed by the state agency. In addition, §625.8 provides whenever an individual has good cause for not filing an application in person, the State must have alternative filing procedures to accept the application. Examples of a claimant having good cause are when a state requires filing an application by telephone or internet. In some cases, state staff may be stationed at disaster recovery centers established upon request of the Governor by FEMA where applications may be filed (*See also Chapter I, Section 5.*). Generally, DUA applicants can be better served filing through State agency offices because of readily available information needed for DUA eligibility purposes.

Since there are several reasons that an individual may qualify for DUA and several types of income that are deductible, in addition to those that are deductible from UC, the State must question the individual at the time of the initial application to determine the specific information that is necessary to the specific application. (*See 20 CFR 625.6(f) and 625.13(a).*) The information recorded in the initial claim database or on an initial claim document must contain sufficient disaster identifying information, reasons for unemployment, and wage information to determine eligibility immediately. Utilizing telephone or other remote claimstaking for DUA does not change the requirements of 20 CFR 625.6(e)(1), in that the applicant must submit documentation to substantiate employment or self-employment, or wages earned from or paid for such employment or self-employment or that an individual was to commence employment.

An individual who files an application for DUA must provide a Social Security Number (SSN), as required under 26 U.S.C. 6109(d) for purposes of reporting DUA as taxable income, and other identifying information which satisfies the State agency that the individual filing an application is the applicant named or legal representative. In all cases, the filing of applications for DUA shall be consistent with 20 CFR Part 625 and with the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services," Employment Security Manual, Part V, sections 5000 et seq. (Appendix A of 20 CFR Part 625). As an exception, and as described in greater detail in paragraph d. below, an authorized legal representative, as determined under the laws of the laws of the applicable State, may file a DUA application and take any subsequent action on the application, including an appeal, on behalf of an incapacitated applicant or an applicant's estate.



## TYPES OF APPLICANTS

**a. Worker Unemployed Due to Disaster.** This is an applicant who has become totally, part-totally, or partially unemployed as a direct result of the major disaster and who was employed in, was to commence employment, or who was prevented from reaching the place of employment because he/she had to travel through a major disaster area to employment. Such employment must have been the principal source of income for the individual and the individual's livelihood must have been dependent upon the individual's employment for another individual or business entity for those wages. (See 20 CFR 625.2(s), (w)(1), and 625.5(a).)

**b. Self-Employed Individual Unemployed Due to Disaster.** This is an applicant who has become totally, part-totally, or partially unemployed as a direct result of the major disaster and who was self-employed in, was to commence self-employment, or who was prevented from reaching the place of self-employment because he/she had to travel through a major disaster area to self-employment. Such self-employment must have been the principal source of income for the individual and the individual's livelihood must have been dependent upon the individual's performing services in self-employment for those wages (net income for DUA WBA computation). (See 20 CFR 625.2(t), (w)(2) and 625.5(b).)

**c. Individual is Head of Household Due to Disaster.** When an applicant has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster, the State must obtain sufficient information at the time of the initial application to determine if the deceased head of household was a **wage earning or self-employed member** of the household related by blood, marriage, adoption, or other legal arrangement to the individual who has become the breadwinner or major support for the household, and shared a common residence with the applicant. This information is necessary in order to determine monetary entitlement for such applicant. In addition to obtaining all of the information with respect to the applicant's unemployment circumstances, the same information must be obtained with respect to the deceased head of household because such applicant will be entitled to the greater of his/her own wages or the deceased wages. (See 20 CFR 625.5(a)(4).)

**d. Incapacitated or Deceased Claimants.** The States can take, adjudicate, and make appropriate payments on DUA claims if such claims are filed by an authorized legal representative of an incapacitated or deceased claimant, when such authority to represent the incapacitated or deceased claimant is obtained under the laws of the applicable State. The issue to be addressed is whether to approve such claim. A factor to be considered is whether the claimant met the eligibility requirements during the period of unemployment caused by a major disaster, and before the event leading to the establishment of the authorized legal representative status. The state should request some objective evidence about the claimant's unemployment, ableness for employment, and availability for employment during each week claimed. States are in the best position to determine the objective evidence necessary to adjudicate such claims. Any eligibility established (or not established), as determined for each week, is not altered by the occurrence of subsequent events, such as death or incapacity, which may affect eligibility to future benefits. The authorized legal representative has the right to file DUA appeals on behalf of an individual.

**e. UC Exhaustee During Disaster Period.** An individual who exhausts UC during the disaster assistance period and is not eligible for any other type of compensation or waiting period credit, may be eligible for DUA. In such cases, the “good cause” unemployment provision for late filing of the DUA initial application is applicable.

**2. Potential Eligibility for Unemployment Compensation.** It is likely that when a disaster is declared, most workers unemployed as a result of the disaster will be eligible for UC and will be filing initial UC claims. The DUA law (Stafford Act) provides that an individual eligible for UC (including any waiting week) under any State or Federal law, may not be paid DUA for the same week of unemployment. This also means that if an individual exhausts benefit entitlement on a claim or the individual's benefit year ends during the disaster assistance period and a new claim for unemployment compensation is established, no further DUA may be paid. Therefore, it is very important that potential eligibility for UC be explored at the time the initial DUA application is filed.

When an individual is found eligible for UC (including those claims where an individual has disqualifying income), the individual will not meet the basic DUA eligibility requirements unless or until UC entitlement is exhausted. If it is determined an individual is eligible for UC based on inquiry through an automated system or other means, the state agency may not need to immediately take a DUA claim. Equally, if it is obvious that the individual is ineligible for UC, it may not be necessary to take UC application in addition to the DUA application. Also, an individual may have an unsatisfied disqualification on the UC claim but could be eligible for DUA (See Chapter V. 4. d.). Under such circumstances, duplicate claimstaking is unnecessary and would result in an unwarranted expenditure of DUA or UC administrative resources (i.e., initial claimstaking). On the other hand, if state staff are stationed at a disaster recovery center, with no access to wage records or other necessary information, it may be necessary to accept both a UC and DUA application.

## PROCESSING

### **3. Processing Initial Applications.**

**a. Determining Timeliness of Application.** The State must determine if the application was filed within 30 days after the State announcement date of the availability of DUA. If the application was not filed within 30 days, the State must conduct fact-finding to determine if the applicant had good cause for late filing in accordance with 20 CFR 625.8(a). Good cause must be determined on an individual basis. In general, when the state has publicly announced the availability of DUA assistance through appropriate news media as directed under 20 CFR, section 625.17, a reasonable basis on which to justify good cause due to ignorance of the program must be well documented. The state agency will determine each case on its merits (e.g., case where individual is hospitalized as the result of injuries suffered due to the disaster). The good cause reasons for DUA are generally more inclusive than what is considered good cause for state UC claim filing. **State rules or policies related to “good cause” for late filing of state unemployment claims are not applicable to determinations of good cause for late filing of DUA claims.** If good cause for late filing is not found, a determination will be made and a copy, including a notice of appeal or reconsideration rights, given to the applicant. No further processing as outlined in the second step that follows will be necessary.

**b. Determining If Unemployment is Due to Disaster.** The State must determine whether or not the applicant's unemployment is the direct result of the major disaster. In making this determination, the applicant must meet all of the eligibility requirements for DUA as outlined in 20 CFR Part 625 as explained in Chapter II of this Handbook. If the applicant's unemployment is determined to not be directly due to the major disaster, a written determination to that effect will be issued which includes notice of appeal or reconsideration rights. No further processing of the application will be necessary.

**c. Utilizing a DUA Expert System.** As part of the DUA initial application process, States may utilize an artificial intelligence or "expert system" approved by the Department (National and/or Regional Office). Expert systems provide for uniformity in DUA decision making between States in accordance with the DUA regulations and for uniformity of decisions for unemployed individuals filing applications within a State as a result of a major disaster. An example of such a system is one developed by the Texas Workforce Commission and further enhanced by a system developed by the Information Technology Support Center (ITSC). Expert systems should have the capability to determine individual eligibility, and, if a claimant is eligible, compute a DUA weekly amount, and print determinations.

**d. Verification of Information.** The State should develop effective controls and means of verification and identification that will ensure DUA is paid only to those applicants who are unemployed due to a major disaster and meet the other eligibility requirements. An eligible individual must be a citizen or national of the United States or, if an alien, be a "qualified alien," as a condition of eligibility for DUA. In addition, the able and available provisions of State law apply to the DUA Program by virtue of 625.4(g), and an **alien** must be **authorized to work for those weeks for which DUA is claimed** in order to be eligible for DUA. If an alien meets the exception provision of 625.4(g), in that an individual injured as a result of the major disaster is deemed to meet the able and available requirement, such alien must still be in "satisfactory immigration status," because the injury does not convey such status to an alien. Therefore, an "unauthorized alien" is not eligible for DUA. All individuals applying for DUA answering "No" to the question, "Are you a U.S. citizen?" must present documents supporting status as a "qualified alien," and the State agency must verify "qualified alien" status. Means of verification and identification employed by State agencies under regular UC program can be used for DUA (SAVE program), and personnel of the Immigration and Naturalization Service at both the regional and State levels are versed in verification of employment eligibility, if questions should arise. If SAVE is not used, other means of verification must be utilized by the State agency. In addition to the required alien verification discussed above, listed below are several suggested means of verification for other issues, although State agencies are not limited to any of these.

(1) For an unemployed worker, verify the reason for unemployment as given on the initial application, with the last employer; also verify the last day worked and any earnings reported for retroactive weeks claimed. The applicant might also be requested to furnish names and addresses of two persons who can attest to the cause of the applicant's unemployment.

(2) For a self-employed individual, request proof to support such self-employment, such as Federal and State income tax returns, business records, affidavits from individuals having knowledge of the business, such as bankers, or other evidence to verify the individual was self-employed.

(3) If an individual alleges unemployment due to the major disaster because the individual was to begin working for another or in self-employment in the major disaster area when or after such disaster occurred and cannot do so, verify with the employer the date the applicant was to start work and the duration of the job. For self-employment, the individual must present sufficient evidence to indicate the individual's intent to enter self-employment.

(4) In wage-record States, verification of employment information can be made through a check of central office wage records. It is also possible that an individual who claims to have been self-employed will have an employer account number which can be verified with employer account records in the central office.

(5) In contiguous States involving a common major disaster, states should arrange for an exchange of data that will include periodic exchanges of listings of individuals who filed and are eligible for DUA in each State. **NOTE:** In cases where the weekly amount initially established was based only on the claimant's statement of earnings, wage and employment documentation must be submitted within 21 days. (*See 20 CFR 625.6(e)(1)*).

**e. Supplementary Eligibility Information.** As part of the initial claimstaking process to assist in determining eligibility for self-employed individuals, State agencies should utilize supplemental forms. An example of such forms is set forth in Appendix F. Appendix F-2 is an example of a form to obtain general self-employment information as well as specific information for an individual engaged in farming. States with fishing and timber industries, for example, may have specific forms designed for self-employment or employment in occupations in those industries. Forms should be designed as needed for specific industries or occupations affected by a major disaster in order to better determine an applicant's eligibility for DUA. In addition, Appendices F-3 and F-4 provide examples of forms designed to assess a self-employed individual's plan to return to self-employment or regular employment. Information on such forms in conjunction with the dates provided permits follow-up by the State agency at precise times.

## **R**IGHTS AND RESPONSIBILITIES

**4. Providing Assistance Rights Information.** An assistance rights interview or an information pamphlet should be provided to all individuals filing for DUA. In general, it should be comparable to the benefit rights interview given to claimants filing for UC. An assistance rights interview will include explanations of the following:

- a. The purpose of this information is to inform the individuals of their rights and responsibilities under the Stafford Act.
- b. The eligibility requirements of DUA.
- c. The disaster assistance period and potential weekly assistance amount if they are found eligible.
- d. The different types of deductions which may affect their application with emphasis on DUA eligibility.
- e. Reporting and filing requirements.
- f. The individual's appeal rights from any adverse decision affecting the individual's application.

g. It should be emphasized to applicants that they will be responsible for giving correct answers to questions asked by State agency representatives and that verification may be made as to the correctness of all information furnished. Particular emphasis should be given to applicant employment information provided on the initial application. The applicants should be informed that these are Federal funds and warned of the penalties for willfully making false statements or concealing information that is material to their application. The significance of the certification the individual will sign each week that DUA is claimed shall be stressed.

#### **5. Example of Initial Application for DUA.**

a. **Purpose and Use.** This is an example of a form that serves the purposes of the initial application, affidavit of employment (including self-employment) and earnings, and obtaining other information used in determining the applicant's entitlement and eligibility for DUA.

b. **Facsimile.** See Appendix F-1 for an example of an Initial Application for Disaster Unemployment Assistance.

c. **Use of Alternative Forms.** States may use an alternate form in lieu of the example of the Initial Application for Disaster Unemployment Assistance contained in this Handbook (see Appendix F and Chapter I, Section 11.d., page I-6).

#### **6. Examples of Supplementary Forms.**

a. **Purpose and Use.** As discussed in paragraph 3.e. above, these are examples of forms that may be used to obtain additional information from a self-employed applicant to determine whether the applicant is unemployed due to the major disaster. Answers to questions on this form will assist the State in making a proper determination of an applicant's eligibility for DUA.

b. **Facsimile.** See Appendices F-2 and F-3 for an example of supplementary eligibility forms.

c. **Use of Alternative Forms.** States may use alternate forms in lieu of the examples of the supplementary eligibility forms for DUA contained in this Handbook (see Appendix F and Chapter I, Section 11.d. page I-6).

UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK**DETERMINING MONETARY ELIGIBILITY****I**NTRODUCTION

1. **Weekly Assistance Amount (WAA) of DUA.** There are different formulas for determining the WAA for an individual filing a DUA claim under the law of a State with an approved UC law and an individual filing in Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

In all jurisdictions, upon the filing of an initial application for DUA, the agency shall immediately determine a weekly amount based on the individual's statement of employment and wages or self-employment income, as the case may be, or based on State agency records or records submitted by the individual at the time of filing. (*See 20 CFR 625.6(e).*) Since all weeks of unemployment for which an applicant is eligible in a disaster assistance period are compensable, if the individual is otherwise eligible, it is not necessary to compute a maximum assistance amount. The Department views an immediate determination as being one made no later than the end of the business day following the day of application. In addition, if the individual's statement does not provide enough detail or justification to warrant a determination under section 2. a. below, in order to minimize any payment errors, a minimum WAA made under section 2. b. below may be the only WAA that can be determined immediately.

**C**OMPUTATION**2. Determining a WAA in States With Approved UC Laws.**

a. **WAA Computation Under State UC Law.** In States with approved UC laws, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the computed weekly benefit amount the applicant would be entitled to under State UC law had all the applicant's employment and wages, including earnings in another State, both covered and noncovered, or self-employment income been included as employment and wages under State law. (*See 20 CFR 625.6(a)(1).*) In no event shall a DUA WAA be greater than the maximum weekly benefit amount for UC authorized by the applicable State law. (*See 20 CFR 625.6(a).*) In computing an applicant's DUA WAA, the **base period** to be utilized **shall be the most recent tax year** that has ended for the individual (whether an employee or self-employed), prior to the individual's unemployment that was a direct result of the major disaster. (*See 20 CFR 625.6(a)(2).*) Net income for the tax year reported by a self-employed individual must be allocated equally for the period(s) needed under State UC law to compute a WAA (i.e., quarterly, weekly, etc.) unless the documentation submitted in accordance with 20 CFR 625.6(e) supports a different allocation.

Wages, as used in the computation of DUA entitlement, mean gross wages paid to a worker. Wages for a self-employed individual, as used in computation of DUA entitlement, means the net income from services performed in self-employment. (*See 20 CFR 625.2(u).*)

All employment and wages, whether or not covered under the applicable State law, and self-employment and income shall be treated in the same manner and with the same effect as covered employment and wages. However, employment and wages and self-employment and income the use of which is prohibited by any Federal law, shall not be used in the determination of DUA entitlement. (*See 20 CFR 625.6(a)(1).*) This Federal law prohibition excludes using wages earned by an alien unless the alien earned the wages while in a certain immigration status as set out in section 3304(a)(14)(A) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(14)(A)). Another example of a Federal law prohibition against using certain wages earned by individuals in an instructional, research, or principal administrative capacity for an educational institution during the period between two academic years or terms if the individuals have a contract or reasonable assurance of performing such services in a second year or term after having performed such services in the first term or year (26 U.S.C. 3304(a)(6)(A)).

(1) **Distribution of Family Wages/Income.** As of the date of filing an initial application for DUA, family members **over the age of majority**, as defined under the statutes of the applicable state, shall have the wages from such employment or net income from the self-employment allocated equally among such adult family members for purposes of computing a weekly amount, unless the documentation of employment and wages or self-employment income substantiate a different allocation. Such family members must have been customarily or routinely employed or self-employed as a family unit or in the same self-employment business prior to the individuals' unemployment that was a direct result of the major disaster. (*See 20 CFR 625.6(a)(3).*)

Family members **under the age of majority**, as of the date of filing an initial DUA application, shall have a weekly amount computed based on the actual wages earned or paid for employment or self-employment rather than an equal allocation. (*See 20 CFR 625.6(a)(3).*) In some cases, this amount may be equal to the equal allocation for adult family members.

(2) **Unemployed Worker - Head of Household Due to Disaster.** When an applicant has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster, the State must determine the applicant's WAA based on the applicant's employment and wages, if such individual had tax year base period earnings. The State must also determine a WAA based on the deceased head of household's tax year base period employment and earnings. If both computations are applicable, such as when a grandparent having a separate residence and income becomes the new breadwinner, the individual's shall be determined entitled to the higher WAA.

Except for the example discussed above, the deceased wage earning head of household must have provided, through employment for wages or self-employment income, one-half or more of the household income or means of livelihood during the tax year base period utilized for purposes of computing a DUA WAA, or would have provided such income but for unemployment during the tax year base period.

## MINIMUM AMOUNT

**b. Minimum Weekly Amount.** If the WAA computed under the State UC law provisions in paragraph a. above is less than 50 percent of the amount of the average weekly payment of UC in the State, as provided quarterly by the Department, or, if the individual has insufficient wages from employment or insufficient or no net income from self-employment in the applicable tax year base period to compute a WAA, the individual is entitled to a WAA equal to 50 percent of the average weekly payment of regular compensation in the State, with certain exceptions for part-time workers (See next paragraph). (*See also, 20 CFR 625.6(b).*)

**(1) Part-time Workers/Self-employed Individuals.** If an individual was customarily or routinely employed or self-employed less than full-time prior to the individual's unemployment as a direct result of the major disaster, such individual's weekly amount is determined by calculating the percent of time the individual was employed or self-employed compared to the customary and usual hours per week that would constitute the average hours per week for year-round full-time employment or self-employment for the occupation, then applying the percentage to the determined 50 percent of the average weekly amount of regular compensation paid in the State. For example:

Minimum weekly DUA amount

(50% of average wkly UC amt.) = \$90.00

Full time hrs for the occupation = 40

Usual hours worked = 20

Reduction (20 hrs is 50% of 40) = 50%

DUA payable = \$45.00 (50% of \$90.00)

The State agency shall use information furnished by the applicant at the time of filing an initial application for DUA and any labor market or occupational information available within the State agency to determine the average hours per week for full-time employment or self-employment for the occupation. If the WAA computed for an individual under this paragraph (part-time computation) is less than the WAA computed under paragraph a. above (State UC law computation), the individual is entitled to the higher weekly amount. In addition, the WAA determined under this paragraph, if not an even dollar amount, shall be rounded up or down in accordance with the applicable State law. (*See 20 CFR 625.6(b)(2).*)

**(2) Commencement of Employment or Self-Employment.** If an individual is unemployed directly due to the disaster because he/she was to commence employment or self-employment on or after the disaster beginning date and was prevented from doing so as a direct result of the disaster, and such individual has no tax year base period earnings to compute a DUA WAA under paragraph a. (State UC law provisions), such individual will receive a DUA WAA determined under the provisions of paragraph b. (50 percent of the State average UC amount). (*See 20 CFR 625.6(b)(1).*)



**3. Determining WAA in Guam and the Commonwealth of the Northern Mariana Islands.** The DUA WAA payable to an unemployed worker or self-employed individual for a week of total unemployment is the average of the UC amounts payable under all states having an approved UC law. The WAA determined, if not an even dollar amount, shall be rounded to the next higher dollar. (See 20 CFR 625.6(c).

**4. Determining WAA in American Samoa, the Trust Territory of the Pacific Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.** The DUA WAA payable to an unemployed worker or self-employed individual for a week of total unemployment shall be the amount agreed upon by the ETA Regional Administrator, San Francisco, and FEMA Federal Coordinating Officer assigned for the disaster. Such amount shall approximate 50 percent of the area-wide average of the weekly wages (rounded to the next higher dollar if not an even dollar amount) paid to individuals in the major disaster area in the quarter immediately preceding the quarter in which the major disaster began. (See 20 CFR 625.6(d).)

## DOCUMENTATION

**5. Documentation of Wages/Income Used in Determining the WAA.** In the case of a WAA determined in accordance with paragraphs 2. through 4. above, based on the individual's statement, the individual shall furnish documentation to substantiate the employment or self-employment or wages earned from or paid for such employment or self-employment or documentation to support that the individual was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so. Such documentation must be submitted within 21 calendar days starting the day after filing the initial DUA application. (See 20 CFR 625.6(e) and (e)(1).) If the 21<sup>st</sup> day ends on a holiday, weekend, or other non-business day, the 21<sup>st</sup> day shall be the next business day.

### **6. Redeterminations.**

**a. Failure to Provide Required Documentation.** Any individual who fails to submit documentation to substantiate employment or self-employment or the planned date of commencement of employment or self-employment, shall be determined ineligible for the payment of DUA for any week of unemployment due to the disaster. Any weeks for which DUA was already paid on the application prior to the date of the determination of ineligibility are overpaid and a determination shall be issued in accordance with 20 CFR 625.14(a). In addition, the State agency shall consider whether the individual's failure to submit documentation would warrant a disqualification for fraud in accordance with the provisions set forth in 20 CFR 625.14(i). (See 20 CFR 625.6(e)(2).)

**b. Partial Submittal of Documentation.** For purposes of a computation of a weekly amount under paragraph 2.a. of this chapter (State UC law provisions), if an individual submits documentation to substantiate employment or self-employment within 21 days, but does not submit documentation of wages earned or paid during the tax year base period, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, the State agency shall immediately redetermine the DUA WAA payable to the individual downward to pay the individual only 50 percent of the average UC weekly amount. (See 20 CFR 625.6(e)(3).)

**c. Late Submittal of Wage Documentation.** Any individual who was redetermined downward in accordance with paragraph b. above, because he/she only submitted employment or self-employment documentation but not wage documentation, may submit necessary documentation to substantiate wages earned or paid during the tax year base period at any time prior to the end of the disaster assistance period. A redetermination upward of the DUA WAA shall immediately be made if the wages earned or paid for services performed in employment or self-employment are sufficient to permit the higher DUA WAA computation under State UC law provisions as stated in paragraph b. above. The higher redetermined DUA WAA will be applicable to all weeks paid during the disaster assistance period. (*See 20 CFR 625.6(e)(4).*)

#### **7. Example of Notice of Determination of Entitlement.**

**a. Purpose and Use.** This form is to inform an applicant of a determination or redetermination of entitlement or nonentitlement to DUA. It will also inform the applicant of appeal rights.

**b. Facsimile.** See Appendix F-4 for an example of a Determination of Entitlement form.

**c. Use of Alternative Forms.** States may use an alternate form in lieu of the example of the Notice of Determination of Entitlement contained in this Handbook (see Appendix F and Chapter I, Section 11. f.)

UNEMPLOYMENT INSURANCE  
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## WEEKLY CLAIMS AND ELIGIBILITY

**I**NTRODUCTION

1. **Week of Unemployment Due to Major Disaster**. An applicant's continued eligibility will be determined on a week-to-week basis. For an applicant to be determined eligible for DUA for a week of unemployment (total, partial, part-total), such unemployment must continue to be a direct result of the major disaster. Once an applicant's unemployment is no longer attributable directly to the major disaster, the applicant's entitlement to DUA ends. One exception is where an individual is unemployed directly due to the disaster but is hired, through a Federal, State, or local government program, to work full-time for a short duration (e.g., 4, 5, or 6 weeks) to assist in disaster clean-up and recovery efforts. At the end of the project, the individual may still be considered unemployed directly due to the disaster, if he/she cannot resume the regular employment. Another exception can occur with self-employed individuals, wherein the patterns of self-employment permit an individual to receive DUA for a period, then be ineligible for a period, then resume DUA. For example, a self-employed farmer may be unemployed due to the disaster for several weeks, then reach a period of time where such farmer is normally unemployed due to seasonal inactivity, then is again unemployed directly due to the disaster for a few weeks.

2. **Retroactive Weeks Claimed**. Determinations as to weeks of unemployment between the date on which the major disaster began and the date the initial application was filed will be based on the information provided by the applicant at the time of filing an initial application. The State will determine the applicant's eligibility for each week of unemployment in the disaster assistance period claimed retroactively. State agencies may issue one check covering the total DUA amount due from the beginning or may issue separate checks for each week payment is due.

3. **Period for Which DUA is Payable**. In accordance with the Act, DUA will be available to an applicant for each week of unemployment in the disaster assistance period that the applicant's unemployment, caused by the major disaster, continues or until the applicant is re-employed in suitable employment or if claimant earns enough disqualifying income to reduce his weekly amount to zero. If, for example, a major disaster begins on a Thursday in a calendar week state, DUA is payable for the week beginning on the Sunday, three days after the disaster period began. (*See 20 CFR 625.2(e) and (f)*). DUA will not be available for any week of unemployment which begins prior to the disaster assistance period or after the end of the disaster assistance period.

## ELIGIBILITY

**4. Eligibility Requirements.** An applicant is eligible for DUA for a week of unemployment if he or she meets the following conditions (*See 20 CFR 625.4*):

- a. Each week of unemployment claimed begins during the disaster assistance period; and,
- b. The individual is an unemployed worker or an unemployed, self-employed individual whose unemployment (total, partial or part-total) has been found to be the direct result of a major disaster in the major disaster area; and,
- c. The applicant is able to work and available for work, within the meaning of the applicable State law, except an applicant will be deemed to meet this requirement if any injury directly caused by the major disaster is the reason for inability to work. (DUA will be issued to the new breadwinner or head of household in lieu of the decedent. However, the new head of household must otherwise meet DUA eligibility requirements, including the able and available requirement.) If the applicant is an alien, the applicant must also be a qualified alien authorized to work for each week claimed. Services or activities performed solely to enable an unemployed self-employed applicant to resume self-employment will not be considered a basis for being unavailable for work; and,
- d. The individual is not eligible for compensation (as defined in 20 CFR 625.2(d)) or for waiting period credit for such week under any other Federal or State law; except that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit; and,
- e. The individual is ineligible for compensation or waiting period credit if the individual is under a disqualification for a cause that occurred prior to the individual's unemployment due to the disaster, or for any other reason is ineligible for compensation or waiting period credit as a direct result of the major disaster.

If an individual is filing for DUA retroactive weeks of unemployment in a State that does not allow retroactive UC applications and payment of regular unemployment compensation for such weeks, and issues a denial for such weeks of regular UC, DUA may be paid for those weeks.

**5. Deductible Income/Benefits.** The weekly DUA amount will be reduced by the amount of any of the following that an individual has received for the week or would receive for the week if the individual filed a claim or application thereof and took all procedural steps necessary under the appropriate law, contract, or policy to receive such payment (*See 20 CFR 625.13(a)*):

- a. Any benefits or insurance proceeds from any source not defined as "compensation" under the DUA regulations for loss of wages due to illness or disability;
- b. A supplemental unemployment benefit pursuant to a collective bargaining agreement.
- c. Private income protection insurance;
- d. Any workers' compensation by virtue of the death of the head of the household as the result of the major disaster in the major disaster area, prorated by weeks, if the individual has become the head of the household and is seeking suitable work because the head of the household died as the result of the major disaster in the major disaster area;

e. The prorated amount of a retirement pension or annuity under a public or private retirement plan or system, prorated, where necessary, by weeks, but only if, and to the extent that, such amount would be deducted from regular compensation payable under the applicable State law; and

f. The prorated amount of primary benefits under Title II of the Social Security Act, but only to the extent that such benefits would be deducted from regular compensation if payable to the individual under the applicable State law.

Regarding private income protection insurance payments, 20 CFR 625.13 provides that the DUA WAA is reduced by the amount that the individual has received, is receiving, or would be receiving for the week if an insurance claim was filed. Coverage under private income insurance policies vary in their protection against losses. Whenever an issue arises over coverage, the agency has a responsibility to attempt to review the policy to resolve the issue. A copy of the insurance policy should be obtained from a DUA applicant or the insurance company to verify if the policy provides for loss of income so that the DUA weekly amount payable can be reduced. The applicant will be required to provide the information as soon as possible and will be encouraged to continue to file weekly claims for DUA until the needed information is submitted. If the individual refuses a request to provide the policy and a copy cannot be obtained from the insurance company, then the individual must be determined ineligible.

**6. Able and Available for Work.** An applicant, to receive DUA must be able to work and available for work according to State law requirements but if the applicant's inability to work is the result of an injury caused by the major disaster, the applicant will be deemed to meet this requirement. An unemployed self-employed applicant will not be considered unavailable for work if he or she is engaged in activities solely for the purpose of resuming self-employment. (*See 20 CFR 625.4(g).*) An applicant shall also be considered to meet the State law able and available requirements if he/she is enrolled in approved training as determined by the State agency. Availability for work is required to be waived under state law for individuals enrolled in approved training.

When the State agency receives information from an applicant which indicates that the applicant has become disabled and this disability is not due to the major disaster, the State agency will apply the able and available provisions of the applicable State law for the period of the disability. If the State agency determines the applicant is not able and available, the applicant will not be eligible for DUA during the period of the disability. The applicant will be notified of the determination and the right of appeal.

**7. Registering for Work with Job Service.** Applicants for DUA should register for work with the Job Service when they file their initial applications, or at such time as the State agency may direct. They are to be provided such employment services (including counseling and referral to suitable work opportunities and suitable training) as will assist them in returning to work. Consideration should be given in situations where physical incapacitation or lack of transportation are due to the disaster and prevent registering in person. (*See 20 CFR 625.3.*)

**8. Suitable Work.** In determining whether work is suitable, the suitability criteria in the State unemployment compensation law, including the labor standards provisions required by Section 3304(a)(5) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(5)) will be used.

Employment in a Federal, State or locally funded temporary job designed to assist in clean-up or other activities to enable the community to recover from the effects of the major disaster is not employment that renders the individual ineligible for further DUA once the temporary job ends. Such temporary employment is **not** considered to be a return to suitable employment. (*See 20 CFR 625.13(b).*)

**9. Week of Partial or Part Total Unemployment.**

**a. Unemployed Worker.** If an applicant indicates that he or she worked in employment or resumed self-employment during the week for which a DUA payment is claimed, the applicant may be entitled to a reduced DUA payment. The DUA WAA for such applicant for that week will be reduced by the wages to the same extent as they would be deductible under State law (*see 20 CFR 625.6(f)(1)*). In accordance with 20 CFR 625.2(u), "Wages" means remuneration for services performed for another, or, as set forth in 20 CFR 625.6(f)(2), gross income from services performed in self-employment. It does not include vacation, holiday or severance pay. For example, a DUA applicant with a WAA of \$80 earned \$31.75 for a week in a State where only earnings in excess of \$10 are deductible:

DUA WAA	\$80.00
Earnings:	\$31.75
Reduction:	\$21.75 Earnings over \$10.00
Balance:	\$58.25
DUA payable:	\$59.00 (rounded to next higher dollar under state law)

The rounding of the DUA payment to the next higher or lower dollar amount, in accordance with State law, will be made after all deductions have been made. (See 20 CFR 625.6(f)(1) and (2)).

**b. Unemployed Self-employed Individual.** The weekly amount of DUA payable to an unemployed self-employed individual for a week of partial or part-total unemployment shall be the weekly amount determined under paragraphs (a), (b), (c), or (d) of 20 CFR 625.6, as the case may be, reduced (but not below zero) by the full amount of any income received during the week for the performance of services in self-employment, regardless of whether or not any services were performed during that same week. This reduction is in accordance with provision in 20 CFR 625.6(f)(1). Notwithstanding the definition of "wages" for a self-employed individual under 625.2(u), the term "any income" for purposes of applying this reduction means gross income (*see 20 CFR 625.6(f)(2)*). (*See also, Chapter IV of this Handbook.*)

**10. Termination of DUA.** The State agency must determine for each week claimed whether an applicant meets the eligibility requirements for DUA. The specific circumstances of each applicant's case will govern the termination of the applicant's DUA prior to the expiration of the disaster assistance period. Such termination is made when it has been determined an applicant's unemployment is no longer directly attributable to the major disaster.

**11. Example of Weekly Request for Assistance.**

**a. Purpose and Use.** This section provides an example of a form designed to serve multiple purposes: (1) by an applicant to claim DUA on a weekly basis; (2) by the State to determine the amount of DUA that is authorized for payment; and (3) by the State to notify the applicant of the reduction, denial or termination of the DUA payment including providing appeal rights.

States are not required to duplicate this sample form for use. The State is authorized to develop its own DUA form, or use the same form used for its UC program. States may also allow DUA claimants to file by telephone or other electronic means. However, any method used by the state must provide for obtaining essential information for DUA claims. See Chapter I, Item 11 f.

**b. Facsimile of Form.** See Appendix F for an example of a Weekly Request for Assistance form.

**c. Use of Alternative Forms.** States may use alternate forms in lieu of the example of the weekly claim form for DUA contained in this Handbook (See Appendix F and Chapter I, Section 11.f.).

UNEMPLOYMENT INSURANCE  
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## INTERSTATE DUA CLAIMS

### INTRODUCTION

1. **Interstate Initial DUA Claim.** When an initial application is being filed as a result of a major disaster in a State other than the State in which or from which the application is filed, the claim will be filed under the Interstate Benefit Payment Plan (IBPP) through the agent State or under remote liable initial claimstaking procedures, as appropriate for the liable State. Refer to Chapter III of this Handbook for general procedures for filing initial applications. This chapter provides additional procedures for handling interstate applications for individuals unemployed as a result of a disaster.

**NOTE:** DUA should be paid only if the individual is not eligible for UC under any State or Federal law.

### INITIAL CLAIMS

a. **Initial Interstate Claim - UI/UCFE/UCX or DUA (Two States).** When a claimant has potential State unemployment insurance (UI), unemployment compensation for federal employees (UCFE), or unemployment compensation for ex-servicemembers (UCX) entitlement under one State's law and a potential DUA claim against another State--

(1) When the agent State accepts initial claims in person or under remote filing procedures, it will:

(a) complete and mail an Initial Interstate Claim, Form IB-1, and transmit a TCIB1 via ICON to the appropriate liable State for UI, UCFE, or UCX entitlement following the regular interstate procedures;

(b) identify the claim as "UI", "UCFE", "UCX" and "CWC", as appropriate, in Item K of Form IB-1. The agent State **will not** indicate "DUA" in "Other";

(c) indicate "Claim resulted from disaster (name & number) in the "Remarks" section of the Form IB-1. (Officially, disasters are identified by numbers, only. However, since the agent State may not know the number, it may use the commonly used name that identifies the disaster, such as "Tornado in Selma, Alabama".)

(d) issue the Interstate Claim Information Sheet, Form IB-7, and the appropriate number of Form IB-2s; and

(e) advise the claimant to return to the agent State local office or telephone the appropriate agent State claim center to file a DUA claim if an ineligible determination is received from the liable State.



(2) The liable State will:

(a) process the initial claim under its regular procedures and issue a UI, UCFE, or UCX monetary determination;

(b) issue appropriate continued claim form(s) and filing instructions under the regular procedures.

**b. Initial Interstate Claim - UI/UCFE/UCX or DUA (Same State).** When a claimant has potential UI, UCFE, or UCX entitlement and a potential DUA claim against the same liable State--

(1) The agent State will:

(a) complete and mail an Initial Interstate Claim, Form IB-1, and transmit a TCIB1 via ICON to the appropriate liable State for a monetary determination following the regular procedures;

(b) identify the claim as "UI", "UCFE" or "UCX", as appropriate, in Item K of Form IB-1 and "DUA" in other (This will allow the liable State to identify and process the claim as DUA in the event that there is no entitlement under any other State or Federal unemployment compensation program);

(c) complete a statement of employment or self-employment and wages earned or paid for such employment or self-employment for the individual's most recently completed taxyear base period. (See 20 CFR 625.6(a)(1), (2), (3) and 625.6(e).) The DUA base period is the most recent tax year for the individual that has ended prior to the disaster;

(d) indicate "Claim resulted from disaster (name & number , if available) in the "Remarks" section of the Form IB-1. (Officially, disasters are identified by numbers. However, since the agent State may not know the number, it may use the commonly used name that identifies the disaster, such as "Tornado in Selma, Alabama".);

(e) issue the Interstate Claim Information Sheet, Form IB-7 with the appropriate number of Form IB-2s; and

(f) advise the claimant that he/she will receive a request for additional information, including an affidavit, from the liable State for completion to establish DUA entitlement if an ineligible monetary determination is issued on the UI, UCFE, or UCX claim.

(2) The liable State will:

(a) process the initial claim and issue a UI, UCFE, UCX monetary determination under its regular procedures;

(b) process the claim as a DUA claim and issue a DUA monetary determination, in accordance with 20 CFR Part 625 and instructions in this Handbook, if the claimant is monetarily ineligible on a UI, UCFE, or UCX claim; and

(c) issue appropriate continued claim form(s) and reporting instructions.

**c. Initial Interstate Claim - DUA.** When an interstate DUA claim is filed:

## (1) The agent State will:

(a) complete and mail an Initial interstate Claim, Form IB-1, identified in Item K under "other" as "DUA" and transmit a TC-IB1 to the liable State;

(b) complete a statement of employment or self-employment and wages earned or paid for such employment or self-employment for the individual's DUA base period and attach it to the Form IB-1. The DUA base period is the most recent tax year for the individual that has ended prior to the disaster. Also, complete an IB-11 with the additional information necessary for determining DUA eligibility that is not covered by the questions on the IB-1;

(c) indicate "Claim resulted from disaster (name & number, if available) in the "Remarks" section of the Form IB-1. (Officially, disasters are identified by numbers. However, since the agent State may not know the number, it may use the commonly used name that identifies the disaster, such as "Tornado in Selma, Alabama .");

(d) issue the Interstate Claim Information Sheet, Form IB-7, together with "two" Continued Interstate Claim, Form IB-2s clearly marked "DUA" in Item 5 to the DUA claimant;

(e) advise the claimant to follow the weeks claimed filing instructions received from the liable State; and

(f) cooperate with the liable State to ensure the accuracy of the DUA payment.

**NOTE:** Liable State instructions concerning the number of IB-2s to be issued to interstate claimants do not apply to DUA claims.

## (2) The liable State will:

(a) issue a DUA monetary determination;

(b) issue continued claims forms and reporting instructions;

(c) contact the State in another State for verification of employment and earnings identified on the Form IB-1 as covered in the other State, when appropriate;

(d) obtain any additional information necessary from the claimant directly; and

(e) not use a Request for Transfer of Wages, Form IB-4, or TC-IB4 to identify or verify wages in another State for purposes of determining DUA claims (Liable States may obtain this information using the Interstate Inquiry (IBIQ) or a TC-IB13.).

## CONTINUED CLAIMS

2. **Interstate Continued Claims.** Continued DUA claims will be handled by the agent and liable State in the same manner as UI, UCFE, or UCX continued claims filed under the IBPP. At the time of the initial claim, the agent State will issue to the DUA claimant two (2) Form IB-2s, clearly marked "DUA" in Item 5 and advise the claimant to complete one for each week claimed and forward directly to the liable State.

When a Form IB-2 "DUA" is received, the liable State must ensure that a DUA payment is issued only if the individual is not eligible for UC in any State and issue reporting instructions and continued claim forms under the liable State's procedures.

## AGENT STATE COST REIMBURSEMENT

3. **Administrative Funds for DUA Agent State Workload Activity.** DUA administrative funds are provided only to States with declared disasters, i.e., liable States. States may not use Title III grants for DUA administrative activity since Title III grants may be used solely for the "proper and efficient administration" of a State unemployment compensation law that the Secretary of Labor has certified meets the requirements of the Federal Unemployment Tax Act (FUTA).

However, the Department recognizes that States may encounter individuals who are entitled to file DUA claims from an agent State as set forth in the procedures above. If an agent State cannot absorb administrative costs for interstate DUA claims activity within any non-Title III funds in the State (e.g., interest and penalty funds), it should **follow the procedures set forth in Chapter IX of this Handbook** to receive reimbursement for such costs.

UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK**OVERPAYMENT ADMINISTRATION****I**NTRODUCTION

**1. Prevention of Overpayments.** The State agency is responsible for taking necessary measures to insure that DUA is paid only to applicants who meet all the qualification requirements. The State agency will use the same methods used in the administration of the UC programs to prevent and detect payment errors made by the state agency and deter fraudulent payments. At a minimum, these methods must be commensurate with the Secretary's Standard for Fraud and Overpayment Detection, ES Manual, Part V, Sections 7510 et seq., and published as Appendix C of 20 CFR Part 625.

**R**ECOUPMENT**2. Overpayments and Recovery**

**a. Finding and Repayment.** If the State agency or a court of competent jurisdiction finds, after a determination and opportunity for a fair hearing, that an individual has received DUA to which he/she was not entitled, whether or not issuance of the payment was the individual's fault or misrepresentation, the applicant will be liable to repay to the applicable State the total sum of the overpayment, plus interest, when it is required under state law. The State agency will take all reasonable measures authorized under State or Federal law to recover for the account of the United States the total sum of the overpayment. (*See 20 CFR 625.14(a).*)

**b. Recovery.** Under 20 CFR 625.14(b), the State agency must recover, insofar as is possible, the amount of any outstanding overpayment of DUA made to the individual by the State or by another State by:

- (1) Deductions from any DUA payable to the individual;<sup>1</sup>
- (2) Deductions from any UC payable to the individual under any Federal UC law administered by the State agency; or
- (3) From any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

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<sup>1</sup> When offsetting a DUA payment to liquidate a DUA or UI overpayment (if a cross-program offset agreement is in effect), no provision of State law limiting an offset of compensation to less than 100 percent of the weekly benefit amount is applicable. If UI is being intercepted to liquidate a DUA overpayment, any State law percentage applications would apply.

**In addition**, If the State has in effect an agreement to implement the cross-program offset provisions of Section 303(g)(2) of the Social Security Act (42 U.S.C. 503(g)(2)), the State **shall apply** the provisions of such agreement to the recovery of outstanding DUA overpayments, or to liquidate a debt due the State UI program. With respect to interstate overpayment recovery, the Interstate Reciprocal Overpayment Recovery Arrangement, implementing the provisions of Section 303(g)(1) of the Social Security Act (42 U.S.C. 503(g)(1)), apply to the extent that both States have a reciprocal overpayment recovery with the Secretary to recover an outstanding overpayment of Federal benefits and to liquidate a debt due the State UI program.

DUA overpayments recovered in any manner will be credited or returned, as the case may be, to the appropriate account of the United States.

## **N**O WAIVER

**c. No Waiver of the Recovery of DUA Overpayments.** Any provision of the applicable State law providing for waiver of recovery of overpayments of compensation will not be applicable to DUA. (*See 20 CFR 625.14(e).*) The provisions of the applicable State law relating to administrative disqualification for fraudulently applying for or receiving a payment of compensation will not apply to applications for any payments of DUA. However, the DUA regulations do provide for specific DUA administrative fraud denials. (*See 20 CFR 625.11 and 625.14(i).*)

**d. Final Decision.** Recovery of any overpayment of DUA will not be enforced by a State agency until the determination establishing the overpayment has become final or, if the claimant files and appeal, the decision after opportunity for a fair hearing has become final. (*See 20 CFR 625.10(a)(i)* for timeframes for appeal.)

**e. Debts Due the United States.** The amount of DUA payable to the applicant will be applied by the State agency for recovery by offset of any:

- a. Debt due to the United States from the applicant;
- b. Child support obligations (nor any custodial parent obligations) being enforced under Title IV-D of the Social Security Act (See section 303(e)(2); and
- c. Food stamp over-issuances if the State makes such offsets under its State UC program.

This deduction is applicable to all state and Federal UC programs. (See section 303(d)(2)(A) of the Social Security Act).

Other than listed above, the offset of DUA for the payment of any debt of the applicant to any other entity or person shall not be permitted. (This prohibition against the offset of DUA payable to the applicant should not be confused with the recovery of DUA overpayments in section 2.b. of this Chapter since, in the case of recovery of DUA overpayments, the amount of the overpayment is not an amount of DUA that is payable to the applicant.)

## WRITE-OFF

**3. Write-Off of DUA Overpayments -- Fraudulent and Nonfraudulent.** After following required collection procedures and having reached a point of diminishing returns, a State may determine that a debt is uncollectible and remove the amount of the uncollectible overpayment from its accounts. In establishing points of diminishing returns, the State will consider estimated or actual recovery rates in relation to:

- a. Costs of different types of action;
- b. Size of the debt; and
- c. The possibility of collection through the State's efforts and by other means.

Removal of an overpayment from the accounting records does not cancel the debt, which remains collectible until paid or otherwise discharged. Although no further active collection efforts by the State are required, the State should keep an administrative record (including a "stop" order or "flag") 3 years after it is removed from the accounting records to provide for possible collection through offset or by other methods until appropriate disposition of the debt.

## CRIMINAL/CIVIL/ADMINISTRATIVE PENALTIES

### **4. Penalties.**

**a. Criminal Offense.** When a State agency has sufficient facts to make a prima facie case, specifically under the Federal Criminal Code (18 U.S.C. 1001),<sup>2</sup> that an individual has fraudulently obtained DUA, the State agency will consider criminal prosecution. This is in accordance with 20 CFR 625.14(j) that provides for potential criminal prosecution under state or Federal law for fraudulently claiming or receiving DUA in addition to any administrative penalties.

Consistent with the ETA/OIG Memorandum of Understanding, the State agency will decide whether criminal action should be undertaken in Federal courts or State courts. If prosecution in the Federal courts is appropriate, the matter will be referred to the appropriate Regional Inspector General for Investigation (RIGI/CSSI), Department of Labor (DOL). If the case does not meet the prescribed criteria and prosecution in the Federal courts is not appropriate, or if the U.S. Attorney declines to prosecute the case, appropriate prosecutive action should be sought by the State agency in State/local courts in accordance with State law and practice.

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<sup>2</sup> Under 18 U.S.C. §1001, knowingly and willfully concealing a material fact by any trick, scheme, or device, or knowingly making a false statement in connection with a claim is a Federal offense, punishable by a fine or imprisonment for not more than five years, or both.

**b. Arrangements with the Department of Justice (DOJ) and the Office of the Inspector****General.**

(1) **Referral to the OIG.** The authority to investigate criminal fraud matters arising from Federal unemployment compensation programs, which includes DUA, is vested in the Department of Labor OIG. (See Memorandum of Understanding (MOU)).

(A) If the established fraudulent overpayment amount exceeds \$1,000 (NOTE: To meet this criteria, the actual amount of the benefit amount overpaid must exceed \$1,000. Penalty amounts added to the actual overpaid amount must not be considered in determining if the overpayment meets this criteria.); or

(B) If the established fraudulent overpayment (regardless of amount) involves the use of a false governmental identification document, such as a social security number (SSN) or immigration documents, to claim entitlement for DUA; or

(C) If there are other factors concerning the fraudulent overpayment which, in the judgment of the State agency or ETA officials, indicate a need for OIG investigation (i.e., offenses of an extremely flagrant nature or offenses involving claimants who leave the State).

When a State agency refers a case to the OIG, it will include in the transmittal correspondence the reason for the referral as taken from the above criteria. For example, if a case involves the use of false government identification documents, the correspondence should indicate the specific document used. If the case involves "other factors", show the specific reason in the transmittal (i.e., the offense is considered exceptionally flagrant and the penalties of State law are not deemed sufficient, or the claimant is no longer residing in the State).

Referral of these claimant fraud cases will be made by a narrative summary from the State agency to the appropriate RIGI/CSSI in a memorandum, State report form, or DOL Incident Report, Form DL 1-156 (a copy of which will also be sent to the appropriate Employment and Training Administration (ETA) Regional Administrator (RA)). Regardless of the type of form used, the narrative summary must set forth a general description of the claimant (i.e., name, SSN, address, race, sex, date of birth, physical description, etc.), the type of referral (from the criteria in this item above), the type(s) of UC programs involved as well as the monetary loss (i.e., DUA - \$1,500), and any relevant facts already developed by the State agency.

The following types of information should also be attached to the narrative summary that is sent to the RIGI/CSSI: copies of application(s) and/or claim(s) for benefits; copies of the claimant's statement/affidavit; copies of the employer reports/payroll information, copies of checks or warrants, State agency determination notices and appeal decisions, if applicable; and samples of signatures and any other evidence the State agency has in its possession that has a bearing on the facts in the case.

(2) **OIG Response.** Within 5 days, the RIGI/CSSI will acknowledge to the State agency (with a copy to the ETA/RA), in writing, its acceptance of the case for further investigation. Those cases referred to but not accepted by the OIG will be returned to the State agency. Upon return of these cases, the State agency should consider whether to prosecute in State/local courts.

In those cases where the referral has been accepted, the OIG will conduct such investigations as are necessary in preparing the case for prosecution. The OIG will keep the State agency advised on a confidential basis on the status of the case. On fraud cases referred to the OIG for investigation, the State agency will coordinate all claimant contacts with the RIGI/CSSI to ensure that these actions will not interfere with the pending criminal investigation and prosecution. After a case is closed, the RIGI/CSSI will notify the State agency of the outcome of the case with a copy to the ETA/RA.

If the referral criteria contained in Item (1) above should be changed within a jurisdiction (State/Region) due to excessive workload, the known attitude of prosecutors, or the quality of State agency obtained prosecutions, the Assistant Inspector General for Investigations and the Director, Office of Management Support, ETA, will authorize revisions to the referral criteria.

The OIG's policy is to avoid unnecessary referral of cases which will not be investigated. The appropriate ETA/RA will be notified, in writing, of referral criteria revisions by the Administrator of the Office of Workforce Security.

**c. Referral of Cases for Prosecution in State Court.** If the U.S. Attorney declines to prosecute a case, the State agency should refer the case for prosecution in a State court if it meets the state's criteria for prosecution of cases of fraudulent claiming of State UI benefits.

**d. Civil Penalties for Fraud.** Section 314 of the Stafford Act (42 U.S.C. 5157) provides that any individual who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit. Whenever it appears that any person has violated or is about to violate any provision of this Act, including any civil penalty imposed under this Act, the Attorney General may bring a civil action for such relief as may be appropriate. Finally, any individual who knowingly violates any order or regulation issued under this Act shall be subject to a civil penalty of not more than \$5,000 for each violation.

**e. Administrative Disqualifications for Fraud.** Any applicant who, with respect to a major disaster, makes or causes another to make a false statement or misrepresentation of a material fact, knowing it to be false, or knowingly fails or causes another to fail to disclose a material fact, in order to obtain or increase for the applicant or for any other person a payment of DUA to which the applicant or other person is not entitled, will be disqualified as follows:

(1) If the false statement, misrepresentation, or nondisclosure pertains to an initial application for DUA, the applicant making the false statement, misrepresentation, or nondisclosure and/or the individual on whose behalf it was made, provided such individual was aware of it, will be disqualified from the receipt of any DUA with respect to the major disaster. (*See 20 CFR 625.14(i)(1).*)



(2) If the false statement, misrepresentation, or nondisclosure pertains to a week for which application for a payment of DUA is made, the applicant making the false statement, misrepresentation or nondisclosure and/or the individual on whose behalf it was made, provided such individual was aware of it, will be disqualified from the receipt of DUA for that week and the first two compensable weeks in the Disaster Assistance Period that immediately follow that week, during which the individual is otherwise entitled to a payment of DUA. (*See 20 CFR 625.14(i)(2).*)

## RECORDS

### 8. Records of DUA Overpayments.

**a. Fraudulent/Nonfraudulent.** Accounting records, specifically identified by program and FEMA disaster number, will be kept for DUA overpayments. Among other things, records of DUA overpayments will contain the reason for each overpayment and will show, separately, overpayments resulting from fraud. Records of DUA overpayments will show, in each case, the amount of the overpayment, the action taken by the State to collect the overpayment, the results of the State's collection activities, the dates and amounts of repayments or amount recovered by offset, and the current balance, if any. The basis for the State's determination that a debt is uncollectible will be included in the overpayment files if the amount of the overpayment is removed from the accounts.

**b. OIG Referrals.** A record or log of each case referred to the OIG will be maintained by the State agency, showing the dates and the documents referred. This record or log may be abbreviated if duplicate copies of all documents referred are retained by the State agency. Final disposition, such as fine or imprisonment, dismissal, or non-prosecution, is to be recorded. The amount of the DUA overpayment established to the claimant's account and subsequent recoveries, as well as collection efforts are to be posted to the claimant's record by the State agency.

### 9. Notice of Overpayment

**a. Purpose and Use.** This Notice of Overpayment form is designed to be used by the State to notify an applicant of overpayment of DUA, the reason for overpayment and to provide the applicant with his or her appeal rights.

**b. Facsimile.** See Appendix F-6 for an example form.

**c. Use of Alternative Forms.** States may use an alternate form if it provides all of the necessary information and is clearly designated as a DUA overpayment determination. (See Appendix F and Chapter I, Item 11 f.).

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## APPEALS

**I**NTRODUCTION

1. **Appeals and Fair Hearings.** There are different procedures for handling appeals and having a fair hearing under the law of a state with an approved UI law and filing an appeal and having a fair hearing in Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands (hereafter referred to as the South Pacific Island jurisdictions).

In all jurisdictions, however, a DUA applicant or an authorized legal representative on behalf of an incapacitated or deceased applicant may appeal any determination or reconsidered determination as to the applicant's eligibility for DUA payments or the amount of any payment as set forth below.

Employers are not interested parties to a DUA claim, and, hence, have no appeal rights, nor should they be furnished any copies of DUA decisions, because the information of the applicant is confidential.

**F**IRST LEVEL APPEAL2. **First Level Appeal of Determination or Redetermination.**

a. **Appeal Period.** Any DUA monetary or nonmonetary determination or redetermination may be appealed within **60 days** of the date the determination or redetermination is issued (in person) or mailed to the individual. The appeal will be made in accordance with State law to the first level administrative appellate authority in the applicable State. (*See 20 CFR 625.10(a)(1).*)

In the case of the South Pacific Island jurisdictions, the appeal will be made to the agency designated to administer the DUA program for the declared disaster. (*20 CFR 625.30(6)*)

b. **First Level Appeal Hearing and Decision.** The State must provide an opportunity for a fair hearing, which must be scheduled and conducted promptly. The applicant must be notified in writing of the decision of the appellate authority, which must include the reasons for the decision, no later than 30 days after the receipt or postmark date of the appeal to the State. The Secretary's Standard for Appeals Promptness (20 CFR Part 650) applicable to UC claims **does not** apply to DUA (20 CFR 625.10(e)(1)). **All** first level (state agency) DUA decisions must be issued within 30 days of the appeal in order to permit any second level decisions (Regional Administrator) to meet the requirements of Section 423 of the Stafford Act. (*See also 20 CFR 625.10(a)(1) and 625.10(e).*)

In the case of the South Pacific Island jurisdictions, the opportunity for a fair hearing and notice of decision will be handled in accordance with the procedures set forth in 20 CFR 625.30. (*See 20 CFR 625.10(b)(1).*)

The appeal decision will contain a notice of the individual's right to review by the appropriate ETA Regional Administrator (RA), if requested, within 15 days after the decision was mailed or delivered in person to the individual. It must also contain instructions for obtaining such review, including the name and address of the RA. The decision must also be provided to the State agency (with the same notice of the right to review) and the appropriate RA<sup>1</sup>. (*See 20 CFR 625.10(a)(2).*)

## HIGHER REVIEW

**3. Review by the Regional Administrator.** Under 20 CFR 625.10(c), the appropriate RA, upon request for review by an applicant or a state agency, will or may upon his or her own motion, review a decision rendered by the state agency in accordance with 20 CFR 625.10(a).

**a. Request Period.** Requests for review by an applicant or State agency will be filed (**within 15 days** after the issuance or mailing of the notice of the first level decision) directly with the RA or through the appropriate State agency for transmittal to the RA for the region in which the State is located. If a request for review is made by the State agency, a copy of the request will be served personally or mailed promptly to the applicant at the applicant's last known address. A review may also be undertaken by the RA's own motion within 15 days after notice of the decision. When a review is undertaken on the RA's own motion, the RA will promptly notify the applicant personally or by mail at the applicant's last known address, and will notify the State agency. Upon receipt of a request for review by an applicant or the State agency, or when the RA so requests, the State agency will forward the entire record to the RA.

**b. Regional Administrator's Decision.** The decision of the RA will be made not later than the earlier of: (1) 45 days after the appeal was received or undertaken, or (2) 90 days from the date the individual's original appeal of the State agency determination or redetermination was received/postmarked by the State agency (Required by Section 423 of the Stafford Act). The RA's notice of decision will be mailed promptly to the last known address of the applicant, to the State agency, and the USDOL Office of Workforce Security Administrator. The decision of the RA will be the final and conclusive administrative decision unless a review is requested by the Assistant Secretary for ETA. (*See 20 CFR 625.10(c)(5).*)

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<sup>1</sup> Under 20 CFR 625.10(b)(2), the applicable for the South Pacific Island jurisdictions is the ETA RA for Region IX (San Francisco).

**4. Transmittal of Appeals Decisions to the Office of Workforce Security (OWS).** State agencies will promptly submit one copy of any appeal decision issued by them pertaining to DUA to the appropriate RA. Under 20 CFR 625.10(c)(5), RAs must promptly submit one copy of any DUA appeal decision to the following address:

U.S. Department of Labor, ETA  
Attn: Office of Workforce Security (OWS/DUO)  
Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

**5. Review by the Assistant Secretary (ETA).** The Assistant Secretary for ETA, on his or her own motion, may review any decision issued by an RA. Notice of a motion for review by the Assistant Secretary will be given to the applicant, the State agency of the applicable State, the appropriate RA, and the OWS Administrator.

When the RA and the State agency are notified of a motion for such a review, they will forward the record in the case to the Assistant Secretary. All written contentions on evidence requested by the Assistant Secretary and any further evidence or arguments offered by the applicant, the State agency, the RA or the Administrator of OWS will be mailed to the Assistant Secretary within 15 days after the mailing of notice of motion for review.

Upon review, the Assistant Secretary may affirm, modify or reverse the decision, or remand it for further proceedings. The decision of the Assistant Secretary will be final, conclusive and binding on all interested parties, and will be precedent applicable throughout the States, including the South Pacific Island jurisdictions. (*See 20 CFR 625.10(d)*).

**6. Procedural Requirements.** In addition to the requirement that a first level appeal decision must be issued within 30 days of the appeal, the regulatory provisions on the right of appeal and opportunity for a fair hearing and request for review shall be consistent with 20 CFR Part 625 and with Sections 303(a)(1) and 303(a)(3) of the Social Security Act (42 U.S.C. 503(a)(1) and 503(a)(3)). (*See 20 CFR 625.10(e)(2)*).

Any petition or other matter required to be filed within a time limit under 20 CFR 625.10, shall be deemed to be filed at the time it is delivered to an appropriate office, or at the time of the postmark if it is mailed via the United States Postal Service to an appropriate office. If any time period specific in 20 CFR 625.10 ends on a Saturday, Sunday, or a legal holiday in the major disaster area, the time limit shall be extended to the next business day. (*See 20 CFR 625.10(e)(3) and (4)*).

Following the correct procedures for the right of appeal and opportunity for a fair hearing is important in that, if an individual were to appeal a RA's or Assistant Secretary's decision to a Federal District Court, the Court is limited to a review under the Administrative Procedure Act to "challenges to final administrative action".

**UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK****FINANCIAL ADMINISTRATION****I**NTRODUCTION

1. **Funding.** Once a disaster is declared by the President, resources must be transferred from FEMA to ETA to provide funding to the affected state. Funding for each disaster is provided separately for administrative costs and benefits. In turn, states are also required to report the cost of each disaster separately by administrative cost and benefits. The funding period for disasters covers a 26-week period after declaration. Immediately after all payment activity has been concluded for a particular disaster, which may be less than 26 weeks after declaration, it should be closed out and unexpended remaining funds returned to FEMA, via ETA. Timely closeout of disasters is important. Since disaster funds do not lapse at year-end, any balances returned to FEMA can be reobligated in subsequent years for other disaster projects.

**E**STIMATING COSTS — FUNDS REQUEST

2. **Requesting Funds.** The "initial advance of funds" from FEMA to support administration and payment of DUA for a major disaster is based on funding estimates provided by the state. State funding requests should include the full cost of all DUA activities and identify the amount requested by cost/expense category. (See outline of Cost/Expense Categories below.) In estimating these costs, states should multiply the average weekly benefit amount by the average projected duration times the projected number of claimants that will file for DUA during the filing period. States cannot use Federal grants to cover any administrative cost appropriately chargeable to DUA. In determining whether an administrative cost is appropriately chargeable to DUA, the cost principles of OMB Circular A-87, "Cost Principles for State and Local Governments", apply. In addition, the government wide "common rule" titled "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (adopted by FEMA at 44 CFR Part 13 and the Department of Labor at 29 CFR Part 97) applies in general. Reasonable justification must accompany any request for funding. Such justification should include as appropriate: (1) key assumptions leading to the cost estimates; and (2) explanation of unusually high estimates for any individual cost/expense category.

Cost/Expense Categories

Estimated No. of Staff

Personal Services (PS) - staff time charges: \$

Personnel Benefits (PB) \$ \_\_\_\_\_

TOTAL (PS/PB) \$ \_\_\_\_\_

Non-Personal Services (NPS) - provide detail as appropriate

Supplies

Travel

Communications

Equipment

Services

Premises

TOTAL NPS \$

AS&T (PS/PB/NPS) \$

TOTAL ADMINISTRATIVE COSTS \$

Benefits \$

**TOTAL DUA FUNDS REQUESTED** \$

**NOTE:** The use of cost/expense categories is recommended for supporting/explaining the administrative cost portion of the overall DUA request. While separate SF 269s (Financial Status Reports) are required for administrative and benefit expenditures, no further cost/expense category detail is required.

The ETA Regional DUA Coordinator will review this request with the FEMA Regional Representative and make a formal recommendation to FEMA. The FEMA Regional Representative, in turn, will review the request and ETA's recommendation and forward the request to FEMA's National Office in Washington, DC. (Requests for additional funds for a disaster, if needed, should follow these same procedures.) The Regional DUA Coordinator

should ensure that the state agency has not requested funds for staff to participate in any Disaster Recovery Centers (DRCs) established by FEMA only because the Governor of the State wants such. DRCs are no longer automatically established by FEMA as a Federal requirement; hence, DUA funds for states' administrative costs to staff DRCs are no longer authorized as a general rule. However, there may be special circumstances where DRCs are established where it would be advantageous for state agency DUA staff to co-locate with FEMA in a DRC. In such circumstances, the FEMA Federal Coordinating Officer for the disaster could authorize FEMA to provide funding to the Department for allocation to the state agency for administrative costs. An example of a special circumstance is where there is a total disruption in an area due to the disaster (i.e., limited access permitted or allowed, and/or buildings, including State agency buildings, damaged or destroyed).

Upon approval, FEMA transfers resources to ETA to fund the administrative costs and benefits related to the disaster. Funding for benefits is transferred to the regions on the Federal Unemployment Benefits and Allowances (FUBA) Appropriation Agency Allocation, and administrative cost funding is transferred on the State Unemployment Insurance and Employment Service Operations (SUIESO) Agency Allocation. Funding is then provided to the states through the issuance of obligational authority.

## **R** EPORTING

### **3. Accounting/Fiscal Reporting.**

a. SF-269 (Financial Status Report). States must account for each disaster separately by administrative costs and benefits. States will use the SF-269 to report these costs through the appropriate fiscal offices. (For additional information and/or instructions, see OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments", as prescribed for use by the Office of Management and Budget.) The SF-269, for each disaster, will be submitted quarterly until the disaster is closed out. (See Chapter X of this Handbook).

b. ETA 2112 (UI Financial Transaction Summary). If a state utilizes its benefit payment account or clearing account for processing DUA transactions (benefits), the ETA 2112 must reflect such transactions. (See Chapter X of this Handbook.) This instruction is not applicable to the South Pacific Island jurisdictions, as they have no state UI systems or accounts.

c. States will ensure that they are utilizing the appropriate disaster project code when agency staff are working on disaster related activities.

d. Funds for the DUA program are no-year funds which means that DUA resources may carry over from one fiscal year to the next.

e. Transfer of funds between the disaster account (benefits/administrative) may be

approved through FEMA and ETA National Office

- f. Funds for one disaster may not be used or transferred to another disaster account.

## CLOSEOUT

**4. Closeout Process.** Once payment activity has ceased or the end of the disaster assistance period, it is important to close out the disaster as soon as possible. This is necessary because disaster funds are no-year funds and any unused state funds will be reobligated by FEMA for future disasters. Therefore, the following procedures will be used in closing out disasters:

- a. The state agency, within 60 days following the end of all payment activity (which may occur prior to the end of the disaster period), will prepare the final report on the disaster required by 20 CFR 625.19(b) and forward it to the National Office (Attn: OWS/DUO), via the appropriate Regional office.

A copy of this report should be provided to the Regional office to trigger the deobligation of excess funds specified below.

- b. Within five days of receipt of the final report, the Region is to deobligate all excess funds. The State may retain sufficient funds to pay claims under appeal. However, the State must justify all such retention of funds to the Regional DUA Coordinator.

- c. A final financial closeout and final deobligation of funds will occur no later than ninety days after the end of payment activity or the disaster assistance period, whichever occurs first. The Region should notify the National Office (Attn: OFAM/OC) of the final expenditures for the disaster and the National Office will reduce the Regions' Agency Allocation.

- (1) It is understood that some activity may continue for a number of months subsequent to the closeout, especially in the collection of overpayments. Such overpayments must also be returned to FEMA via ETA (per regulations at 20 CFR 625.14). If the agency has closed out its accounting fund, the agency is to send a check to the ETA Regional Administrator for deposit into the FUBA account. Checks should be submitted monthly and made payable to the U.S. Department of Labor. The state should include a brief cover letter to the Regional Administrator explaining the purpose of the check. Checks should be mailed to Mr. Jack Rapport, Administrator, U.S. Department of Labor, Office of Financial and Administrative – Employment and Training Administration, 200 Constitution Ave., NW, Room N-4653, Washington, D.C. 20210.

- (2) States should make the necessary accounting entries on the monthly ETA 2112 Report (UI Financial Transaction Summary) if the state utilized its benefit payment account or clearing account for DUA transactions.



The DUA recoveries will be shown by the agency as a deposit on lines 24/25 with an explanation of the entries under the "Comments" portion of the report. The DUA benefit disbursements should be shown as a disbursement on line 45, along with appropriate comments. (See *ETA Reports Handbook No. 401, Section II-1-1, for instructions on preparing Form ETA 2112.*)

**5. Financial Monitoring.** Regions should monitor each DUA project to ensure that excess funds are not being maintained by the State and that proper administrative costs are being charged to the disaster. In cases where it appears or it is determined that administrative costs will be in excess of 15 percent of DUA benefit costs for the disaster, the Regional DUA Coordinator should be immediately advised of the reasons thereof. The coordinator will need this information to communicate with FEMA and ETA National Office if any issues should arise.

## **A** GENT STATE

**6. Agent State Reimbursement -- Interstate Claims.** Agent state DUA workload will be reimbursed by the ETA in the following manner:

a. The agent State claims activity will be reported to the appropriate ETA Regional Office (RO) when DUA interstate claimstaking activity ceases on the applicable disaster. This report will identify the disaster number and the liable states (states where the disaster occurred). **The agent state must also provide, as part of the report, a listing of the names and Social Security Numbers of the claimants filing DUA claims against the liable states** for which reimbursement is being sought. It will be the agent state's responsibility to coordinate the preparation of its fiscal close-out report with the liable states and to inform its RO of its agent state DUA claims activity.

b. The RO of the agent state will forward two copies of the agent state's final workload activity report: one copy to the National Office, Office of Workforce Security (Attn: DUO); and the other copy to the RO having oversight over the liable state. This report will be utilized by the liable state RO for DUA workload reconciliation purposes. The RO of the liable state will include or ensure inclusion of the workload report from the agent state(s) in the final fiscal closeout report for the applicable disaster and forward this final fiscal report to the ETA National Office (Attn: OFAM).

c. Upon approval of the agent state's final workload activity report by the National Office, the ETA will reimburse the agent state (via the agent state's RO) for its costs in taking DUA claims.

UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK**REPORTING REQUIREMENTS****I**NTRODUCTION

1. **General Reporting Requirements.** State agencies are required to furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the DUA program. These reports and studies include, but are not limited to, monthly activity reporting on disaster payment activities (ETA 90-2), monthly UI Financial Transaction Summary (ETA 2112 Report) (OMB No. 1205-0154), administrative costs and benefits on the Financial Status Report (SF-269) (OMB No. 0348-0039) (both of these financial reports are discussed in Chapter IX), and a final narrative summary report to the Secretary. This Chapter provides instructions to be followed by the States in reporting for the DUA program. (See 20 CFR 625.16 and 625.19)

**NOTE:** Unless otherwise indicated, all data fields requiring a date on the reports must be completed in a MM/DD/YYYY format.

**2. Definitions, for Reporting Purposes**

a. **Effective Date of an Initial Application.** The first day of an applicant's first week of unemployment which results from a major disaster, and which starts with the first week following the date on which the major disaster began, as specified in the disaster notification. (See 20 CFR 625.2(e) and (f).)

b. **Eligible.** Meets qualifications for receiving disaster unemployment assistance at 20 CFR 625.4. Under 20 CFR 625.4(i), if an individual is eligible for UC, such individual is not eligible for DUA and should not have DUA activities included in any DUA reports until such time as the individual meets the eligibility requirements for DUA.

**E**TA 90-2**3. ETA Form 90-2, DUA Activities Under the Stafford Act.**

a. **Purpose and Use.** This report provides information on the nature and scope of activities performed in administering provisions of Section 410 of the Stafford Act. Its workload items are also used with fiscal reports to estimate the cost of administering the Stafford Act.

b. Facsimile

Disaster Unemployment Assistance  
Activities

U.S. Department of Labor  
Employment and Training Administration

This Report is required in accordance  
with 20 CFR Part 625

OMB Approval No. 1205-0051  
Expiration Date: 06/30/2008

REPORT PERIOD ENDED	STATE	FEMA DR. NO	REPORT TYPE.	DECLARATION DATE	ANNOUNCEMENT DATE

Section A. Application and Payment Activities

CATEGORY	LINE NO.	INITIAL APPLICATIONS	NO. DETERMINED ELIGIBLE	FIRST PAYMENTS	WEEKS CLAIMED	WEEKS COMP.	AMOUNT COMPENSATED
		1	2	3	4	5	6
Total	101						\$
Self-employed	102						

Section B. Denial and Appeals Activity

CATEGORY	LINE NO.	WEEKS OF DUA DENIED	APPEALS DISPOSED		APPEALS DISPOSED		FAVOR OF APPELLANT	
			STATE	RA	STATE	RA	STATE	RA
			7	8	9	10	11	12
Total	201							
Self-employed	202							

Section C. Overpayment Activity and Administration

CATEGORY	LINE NO.	OVERPAYMENTS			ADMINISTRATIVE COSTS		
		CASES	WEEKS	AMOUNT	PERSONNEL	NPS	AS&T
		14	15	16	17	18	19
TOTAL	301			\$	\$	\$	\$
FRAUD	302			\$			

SIGNATURE	TITLE
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Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents' obligation to reply to these reporting requirements is required to obtain or retain benefits and is mandatory per 20 CFR 625. Public reporting burden for this collection of information is estimated to average 1/6 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Employment and Training Administration, Office of Workforce Security, Department of Labor, Room S-4231, 200 Constitution Avenue, NW, Washington, DC 20210 (Paperwork Reduction Project 1205-0051)

ETA 90-2  
Rev. Jan. 2004

**c. Scope and Duration of the Report**

- (1) Submit a separate report for each major disaster declared in a state where an announcement has been made by the state agency of the availability of DUA.
- (2) The first report shall be sent in the month following the announcement date, and later reports shall be sent each month that DUA activity continues to occur, such as for payments made for weeks in the disaster assistance period (DAP) issued as a result of appeals.
- (3) Generally, states incur a certain amount of administrative costs even if no DUA benefits are paid. In these cases, a final ETA 902 must still be submitted. In Section C: columns 17-19, indicate the amount of administrative funds provided by FEMA.

**d. Due and Transmittal**

- (1) Reports shall be submitted electronically each month providing DUA activities performed during the preceding calendar month. Reports are due in the National Office on the 30th of the month following the month to which data relate. (South Pacific Island jurisdictions must submit hardcopy reports, as there is no electronic submittal method available to them at this time.)
- (2) For South Pacific Island jurisdictions, one copy should be sent to the National Office addressed as follows:

U.S. Department of Labor, ETA  
Attn: Office of Workforce Security-DUIO  
Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

One copy should be sent to the appropriate ETA Regional Office.

**e. General Reporting Instructions.**

- (1) In all instructions, reference to State UI (UC) claims will include UCFE, UCX, TRA, RRA (Railroad), EB, and Federal Supplementary Compensation, or any other program included and/or defined under 20 CFR 625.2(d).
- (2) Self-employed applicants are those who have filed an initial request for DUA and for whom it was determined that their primary reliance for income is on their performance of services in their own business or farm.
- (3) Payments made to replace DUA payments which were canceled for valid reasons should not be counted as first payments, or weeks compensated; and the amount of such reissued payments should not be included in the amount compensated.

**f. Heading of Form ETA 90-2.**

(1) **Report Period Ended.** Enter the month; last day of the month to which data relate; and four digit year to which the data relate; e.g., 01/31/1998.

(2) **State.** Enter the two-letter FIPS State Alpha Code (identical to the two-letter U.S. Postal Service abbreviation) of the State or South Pacific Island jurisdiction as it appears in FIPS Publication 5-2. This Federal Information Processing Standards publication was issued by the National Institute of Standards and Technology on May 28, 1987.

(3) **FEMA DR No.** Enter the FEMA disaster identification number assigned by the FEMA National Office at the time of a disaster.

(4) **Report Type.** Enter "I" for (i)nterim if the disaster workload and/or payment activity on going. Enter "F" for (f)inal if the disaster workload and/or payment activity ceased.

(5) **Declaration Date.** Enter the date the President declared the major disaster; e.g., 10/15/1998. (This was formerly entitled announcement date on old form ETA 90-2.)

(6) **Announcement Date.** Enter the date the State agency or South Pacific Island jurisdiction announced the availability of DUA through the media in accordance with 20 CFR 625.17; e.g., 10/18/1998.

**g. Preparation of the ETA 90-2 Data Items.**

**NOTE:** For columns 1, 2, and 8 through 13, the entry in the line labeled "Total" (lines 101 and 201) should be distributed, as applicable, to the next line (lines 102 and 202) reflecting the number of self-employed individuals included in the "Total".

(1) **Column 1, Initial Applications.** Enter the number of initial applications for DUA taken during the report period. This will equal the number of forms used by the State agency for filing initial applications that were completed and/or number of applications entered into an automated system through an electronic/telephone claimstaking system during the report period.

(2) **Column 2, Number Determined Eligible.** Enter the number of individuals determined eligible for DUA during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs (see Chapter III, Section 2. in this Handbook).

(3) **Column 3, First Payments.** Enter the number of payments which represent, for any individual, the first week for which assistance is paid in his/her disaster assistance period.

(4) **Column 4, Weeks Claimed.** Enter the total number of weeks for which DUA is claimed during the report period, whether or not DUA is actually paid. If claims are filed weekly, the number of weeks will equal the number of weekly claim forms or weekly claims filed by telephone or other means received during the report period. If claims are filed other than weekly, the number of weeks will equal number of weeks claimed on forms or by telephone or other means during the report period.

(5) **Column 5, Weeks Compensated.** Enter the number of weeks of unemployment for which DUA was paid during the report period. A week of unemployment compensated is any week of unemployment for which DUA funds are paid, regardless of amount.

(6) **Column 6, Amount Compensated.** Enter the amount of DUA funds represented by the weeks reported in column 5.

(7) **Column 7, Weeks of DUA Denied.** Enter the number of weeks of unemployment where a DUA payment was denied for which an individual, except for the reason of the denial, would have been eligible to receive a DUA payment.

**NOTE:** For columns 8 through 13, the entries refer to the number of cases received or disposed of during the report period by authority (i.e., first level State appeals authority and the ETA Regional Administrator (RA) as the second level). All cases, including cases disposed of before reaching the appeals authority, should be included. Definitions of case, authority, disposal, etc., are those developed for the DUA program or, when these do not exist, are those used in the State UI program.

(8) **Columns 8 and 9, Appeals Filed.** In columns 8 and 9, distribute by type of authority, the appeal cases or requests for review received during the month. In addition, provide a sub-breakout of the “Total” for self-employed individuals in line 202.

(9) **Columns 10 and 11, Appeals Disposed.** Enter in columns 10 and 11, the total number of cases decided during the month by authority level. In line 202, provide the number of cases disposed of involving self-employed individuals.

(10) **Columns 12 and 13, Favor of Appellant.** Enter in columns 12 and 13, the number of appeal decisions of those reported in columns 10 and 11, which were in favor of the appellant by authority level. In line 202 enter a breakout of self-employed individuals who appealed and had the decision in their favor.

(11) **Columns 14, 15, and 16, Overpayments. In column 14,** Cases, line 301, enter the number of cases, including willful misrepresentation (fraud) determined during the report period as an overpayment, regardless of when it occurred. In line 302 provide a sub-breakout of the number of cases determined as fraud cases.

In **column 15,** Weeks, enter in line 301, the number of weeks of DUA made in overpayment, represented by the cases reported in column 14, with a sub-breakout of the total weeks entered in line 301 for weeks of fraud to be entered in line 302.

In **column 16,** Amount, enter in line 301, the amount overpaid represented by cases reported in column 14. Provide a sub-breakout of the amount involving fraud in line 302.

(12) **Columns 17, 18 and 19, Administrative Costs.** If available on a monthly basis, entries are needed in these items to better monitor State agency expenditures and to support requests for additional administrative funds from FEMA.

Enter in **column 17,** Personnel Costs (PC), the amount of personal service (salary) costs and personnel benefits (health, retirement, etc.) costs for individuals directly involved in the DUA program.

In **column 18,** NPS, enter the total dollars expended for non-personal service costs (e.g. supplies, travel, equipment, etc.).

Enter in **column 19**, AS&T, enter the total PC and NPS costs for staff performing AS&T functions to support the staff reported in column 17.

#### 4. Checking the Report.

##### a. General Checks.

Entries should be made for all required items. If the item is inapplicable, or if applicable but no activity corresponding to the items occurred during the report period, a zero should be entered. A report containing missing data cannot be sent to the National Office, but can be stored on the state's system. Special attention should be given the entries in the heading because the "FEMA DR No." and "Declaration Date" will be used to identify and accumulate data from reports relating to individual disasters.

##### b. Arithmetic Checks.

(1) For columns 1, 2, and 8 through 13, the entries in line 102 and 202 respectively, should be equal to or less than the entries in line 101 or 201.

(2) For columns 14 through 16, the entries in line 302 should be equal to or less than line 301.

#### 3. Signature.

Signature is only required if reports are sent manually to the National Office.

## **E**TA 2112

5. Monthly UI Financial Transaction Summary (ETA 2112 Report). If a State utilizes its benefit payment account or clearing account for processing DUA transactions (benefits), the ETA 2112 (OMB No. 1205-0154) must reflect such transactions. The DUA benefit deposits should be shown by the agency as a deposit on lines 24/25 with an explanation of the entries under the "Comments" portion of the report. The DUA benefit disbursements should be shown as a disbursement on line 45, along with appropriate comments. (*See ETA Reports Handbook No. 401, Section II-1-1, for instructions on preparing Form ETA 2112.*) This instruction is not applicable to the South Pacific Island jurisdictions as they have no State UI systems or accounts.

## **S**F-269

6. Financial Status Report/Administrative Costs and Benefits (SF-269). States, including the South Pacific Island jurisdictions, must account for each disaster separately by administrative costs and benefits. All jurisdictions should use the SF-269 (OMB No. 0348-0039) to report these costs through the appropriate fiscal offices. (For additional information and/or instructions, see OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments", as prescribed for use by the Office of Management and Budget.) The SF-269, for each disaster, will be submitted quarterly until the disaster is closed out. For instructions on reporting SF 26 financial data via Enterprise Information Management System (EIMS), refer to TEGL No. 17-00 and TEGL 17-01.



# FINAL REPORT

## 7. Final Report.

a. **Purpose.** The final report to the Secretary, as required by 20 CFR 625.19(b), is designed to summarize in narrative form what took place during a specific disaster. It will also be used to recap the expenditure of funds for DUA benefit payments as well as for administration of the DUA program for the major disaster, and what amount of unspent funds, if any, were returned to FEMA.

b. **Due Date and Number of Copies.** Within 60 days following the end of payment activity or the disaster assistance period, the State agency will submit a final report to the Secretary. The State agency will forward this report to the Director, Office of Workforce Security (Attn: DUO), through the appropriate RA.

c. **Preparation of the Report.** (See APPENDIX D -- EXAMPLE OF A "FINAL NARRATIVE REPORT" ON THE DUA PROGRAM). This final summary report shall be in narrative form, and shall contain the following:

- (1) A chronological list of significant events;
- (2) Pertinent statistics about the disaster unemployment assistance provided to the victims;
- (3) Brief statements of major problems encountered;
- (4) Discussion of lessons learned;
- (5) Suggestions for improvement of the program during future major disasters; and
- (6) Summary account of expenditure of funds for DUA benefit payments as well as for administration of the DUA program for the major disaster.

**EXTRACTS OF SECTIONS 410 AND 423 OF THE ROBERT T. STAFFORD DISASTER RELIEF  
AND EMERGENCY ASSISTANCE ACT:****SECTION 410. [UNEMPLOYMENT ASSISTANCE]**

A(a) The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) Reemployment Assistance.

(1) State Assistance. A State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) Federal Assistance. The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

**SECTION 423. [APPEALS OF ASSISTANCE DECISIONS]**

A(a) Right of Appeal. Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) Period for Decisions. A decision regarding an appeal under subsection (a) shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) Rules. The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.

20 CFR PART 625--DISASTER  
UNEMPLOYMENT ASSISTANCE  
Sec.

- 625.1 Purpose; rules of construction.
- 625.2 Definitions.
- 625.3 Employment Services.
- 625.4 Eligibility requirements for Disaster Unemployment Assistance.
- 625.5 Unemployment caused by a major disaster.
- 625.6 Weekly Amount; Jurisdictions; Reductions.
- 625.7 Disaster Unemployment Assistance: Duration.
- 625.8 Applications for Disaster Unemployment Assistance.
- 625.9 Determinations of entitlement; notices to individual.
- 625.10 Appeal and review.
- 625.11 Provisions of State law applicable.
- 625.12 The applicable State for an individual.
- 625.13 Restrictions on entitlement; disqualification.
- 625.14 Overpayments; disqualification for fraud.
- 625.15 Inviolate rights to DUA.
- 625.16 Recordkeeping; disclosure of information.
- 625.17 Announcement of the beginning of a Disaster Assistance Period.
- 625.18 Public access to Agreements.
- 625.19 Information, reports and studies.
- 625.20 Saving clause.
- 625.30 Appeal Procedures for Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands and the Trust Territory of the Pacific Islands.

APPENDIX A to Part 625--STANDARD FOR  
CLAIM FILING, CLAIMANT REPORTING, JOB  
FINDING AND EMPLOYMENT SERVICES

APPENDIX B to Part 625--STANDARD FOR  
CLAIM DETERMINATIONS--SEPARATION  
INFORMATION

APPENDIX C to Part 625--STANDARD FOR FRAUD  
AND OVERPAYMENT DETECTION

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4- 75 (40 FR 18515).

§ 625.1 Purpose, rules of construction.

(a) Purpose. Section 410 of "The Robert T. Stafford Disaster Relief and Emergency Assistance Act" amended the program for the payment of unemployment assistance to unemployed individuals whose unemployment is caused by a major disaster, and to provide reemployment assistance services to those individuals. The unemployment assistance provided for in section 410 of the Act is hereinafter referred to as Disaster Unemployment Assistance, or DUA. The

regulations in this part are issued to implement sections 410 and 423 of the Act.

(b) First rule of construction. Sections 410 and 423 of the Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) Second rule of construction. Sections 410 and 423 of the Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) Effectuating purpose and rules of construction.

(1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor, on receipt of a request from the Department, a copy of any determination or redetermination ruling on an individual's entitlement to DUA.

(2) If the Department believes a determination or redetermination is inconsistent with the Secretary's interpretation of the Act, the Department may at any time notify the State agency of the [D]epartment's view. Thereafter, the State agency shall appeal if possible, and shall not follow such determination or redetermination as a precedent; and in any subsequent proceedings which involve such determination, or redetermination, or wherein such determination or redetermination is cited as precedent or otherwise relied upon, the State agency shall inform the hearing officer of the Department's view and shall make all reasonable efforts to obtain modification, limitation, or overruling of the determination or redetermination.

(3) A State agency may request reconsideration of a notice that a determination or redetermination is inconsistent with the Act, and shall be given an opportunity to present views and arguments if desired. If a determination or redetermination setting a precedent becomes final, which the Department believes to be inconsistent with the Act, the Secretary will decide whether the Agreement with the State shall be terminated.

(4) Concurrence of the Department in a determination or redetermination shall not be presumed from the absence of a notice issued pursuant to this paragraph.

§ 625.2 Definitions.

(a) "Act" means sections 410 and 423 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (formerly section 407 of the "Disaster Relief Act of 1974", Pub. L. 93-288, 88 Stat. 143, 156, approved May 22, 1974), 42 U.S.C. 5177, 5189a, as amended by The Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707, 102 Stat. 4689, 4704, 4705, approved November 23, 1988.

(b) "Agreement" means the Agreement entered into pursuant to the Act, between a State and the Secretary of Labor of the United States, under which the State agency of the State agrees to make payments of Disaster Unemployment Assistance in accordance with the Act and the regulations and procedures thereunder prescribed by the Secretary.

(c) "Announcement date" means the first day on which the State agency publicly announces the availability of Disaster Unemployment Assistance in the State, pursuant to § 625.17.

(d) "Compensation" means unemployment compensation as defined in section 85(b) of the Internal Revenue Code of 1986, and shall include any assistance or allowance payable to an individual with respect to such individual's unemployment under any State law or Federal unemployment compensation law unless such governmental unemployment compensation program payments are not considered "compensation" by ruling of the Internal Revenue Service or specific provision of Federal and/or State law because such payments are based on employee contributions which are not deductible from Federal income tax liability until the total nondeductible contributions paid by the employee to such program has been paid or are not "compensation" as defined under paragraph (d)(5) of this section. Governmental unemployment compensation programs include (but are not limited to) programs established under: a State law approved by the Secretary of Labor pursuant to section 3304 of the Internal Revenue Code, chapter 85 at title 5 of the United States Code, the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.), any Federal supplementary compensation law, and trade readjustment allowances payable under chapter 2 of title II of the Trade Act of 1974(19 U.S.C. 2271 et seq.). "Compensation" also includes "regular compensation", "Federal supplementary compensation", and "disability payments" defined as follows:

(1) "Regular compensation" means compensation payable to an individual under any State law or the unemployment compensation plan of a political subdivision of a State and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85 (Parts 609 and 614 of this chapter), but not including extended compensation or additional compensation.

(2) "Additional compensation" means compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.

(3) "Extended compensation" means compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended

Unemployment Compensation Act of 1970 (title II, Pub. L. 91-373; 84 Stat. 695, 708; Part 615 of this chapter), as amended with respect to the payment of extended compensation, and, when so payable, includes additional compensation and compensation payable pursuant to 5 U.S.C. Chapter 85.

(4) "Federal supplementary compensation" means supplemental compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) "Disability payments" means cash disability payments made pursuant to a governmental program as a substitute for cash unemployment payments to an individual who is ineligible for such payments solely because of the disability, except for payments made under workmen's compensation acts for personal injuries or sickness.

(e) "Date the major disaster began" means the date a major disaster first occurred, as specified in the understanding between the Federal Emergency Management Agency and the Governor of the State in which the major disaster occurred.

(f) "Disaster Assistance Period" means the period beginning with the first week following the date the major disaster began, and ending with the 26th week subsequent to the date the major disaster was declared.

(g) "Disaster Unemployment Assistance" means the assistance payable to an individual eligible for the assistance under the Act and this part, and which is referred to as DUA.

(h) "Federal Coordinating Officer" means the official appointed pursuant to section 302 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act, to operate in the affected major disaster area. (i) "Governor" means the chief executive of a State. (j) "Initial application" means the first application for DUA filed by an individual, on the basis of which the individual's eligibility for DUA is determined. (k) "Major disaster" means a major disaster as declared by the President pursuant to section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(l) "Major disaster area" means the area identified as eligible for Federal assistance by the Federal Emergency Management Agency, pursuant to a Presidential declaration of a major disaster.

(m) "Secretary" means the Secretary of Labor of the United States.

(n) "Self-employed individual" means an individual

whose primary reliance for income is on the performance of services in the individual's own business, or on the individual's own farm.

(o) "Self-employment" means services performed as a self-employed individual.

(p) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.

(q) "State agency" means—

(1) In all States except the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands, the agency administering the State law; and

(2) In the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands, the agency designated in the Agreement entered into by the State.

(r)(1) "State law" means, with respect to—

(i) The States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, the unemployment compensation law of the State which has been approved under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)); and

(ii) The Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands, the Hawaii Employment Security Law.

(2) "Applicable State law" means, for an individual, the State law of the applicable State for an individual as provided in § 625.12.

(s) "Unemployed worker" means an individual who was employed in or was to commence employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's employment for wages, and whose unemployment is caused by a major disaster as provided in § 625.5(a).

(t) "Unemployed self-employed individual" means an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance

of service in self-employment, and whose unemployment is caused by a major disaster as provided in § 625.5(b).

(u) "Wages" means remuneration for services performed for another, and, with respect to a self-employed individual, net income from services performed in self-employment.

(v) "Week" means a week as defined in the applicable State law.

(w) "Week of unemployment" means—

(1) For an unemployed worker, any week during which the individual is totally, part-totally, or partially unemployed. A week of total unemployment is a week during which the individual performs no work and earns no wages, or has less than full-time work and earns wages not exceeding the minimum earnings allowance prescribed in the applicable State law. A week of parttotal unemployment is a week of otherwise total unemployment during which the individual has odd jobs or subsidiary work and earns wages not exceeding the maximum earnings allowance prescribed in the applicable State law. A week of partial unemployment is a week during which the individual works less than regular, fulltime hours for the individual's regular employer, as a direct result of the major disaster, and earns wages not exceeding the maximum earnings allowance prescribed by the applicable State law.

(2) For an unemployed self-employed individual, any week during which the individual is totally, parttotally, or partially unemployed. A week of total unemployment is a week during which the individual performs no services in self-employment or in an employer-employee relationship, or performs services less than full-time and earns wages not exceeding the minimum earnings allowance prescribed in the applicable State law. A week of part-total unemployment is a week of otherwise total unemployment during which the individual has odd jobs or subsidiary work and earns wages not exceeding the maximum earnings allowance prescribed in the applicable State law. A week of partial unemployment is a week during which the individual performs less than the customary full-time services in self-employment, as a direct result of the major disaster, and earns wages not exceeding the maximum earnings allow-ance prescribed by the applicable State law, or during which the only activities or services performed are for the sole purpose of enabling the individual to resume self-employment.

(3) If the week of unemployment for which an individual claims DUA is a week with respect to which the individual is reemployed in a suitable position or has commenced services in self-employment, that week shall be treated as a week of partial unemployment if the week qualifies as a week of partial unemployment as defined in this paragraph.

§ 625.3 Reemployment assistance.

(a) State assistance. Except as provided in paragraph (b) of this section, the applicable State shall provide, without reimbursement from any funds provided under the Act, reemployment assistance services under any other law administered by the State to individuals applying for DUA and all other individuals who are unemployed because of a major disaster. Such services shall include, but are not limited to, counseling, referrals to suitable work opportunities, and suitable training, to assist the individuals in obtaining reemployment in suitable positions as soon as possible.

(b) Federal assistance. In the case of American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands, the Department of Labor, in consultation with the Federal Emergency Management Agency, will determine what reemployment services are needed by DUA applicants, and if any available Federal programs of reemployment assistance services can be implemented in that jurisdiction.

#### § 625.4 Eligibility requirements for Disaster Unemployment Assistance.

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if

- (a) That week begins during a Disaster Assistance Period;
- (b) The applicable State for the individual has entered into an Agreement which is in effect with respect to that week;
- (c) The individual is an unemployed worker or an unemployed self-employed individual;
- (d) The individual's unemployment with respect to that week is caused by a major disaster, as provided in § 625.5;
- (e) The individual has filed a timely initial application for DUA and, as appropriate, a timely application for a payment of DUA with respect to that week;
- (f) That week is a week of unemployment for the individual;

(g) The individual is able to work and available for work within the meaning of the applicable State law: Provided, That an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment;

(h) The individual has not refused a bona fide offer of employment in a suitable position, or refused without good cause to resume or commence suitable self-employment, if the employment or self-employment, could have been undertaken in that week or in any prior week in the Disaster Assistance Period; and

(i) The individual is not eligible for compensation (as defined in § 625.2(d)) or for waiting period credit for such week under any other Federal or State law, except that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit. An individual shall be considered ineligible for compensation or waiting period credit (and thus potentially eligible for DUA) if the individual is under a disqualification for a cause that occurred prior to the individual's unemployment due to the disaster, or for any other reason is ineligible for compensation or waiting period credit as a direct result of the major disaster.

#### § 625.5 Unemployment caused by a major disaster.

(a) Unemployed worker. The unemployment of an unemployed worker is caused by a major disaster if—

- (1) The individual has a "week of unemployment" as defined in § 625.2(w)(1) following the "date the major disaster began" as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) The individual is unable to reach the place of employment as a direct result of the major disaster; or
- (3) The individual was to commence employment and does not have a job or is unable to reach the job as a direct result of the major disaster; or
- (4) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster; or
- (5) The individual cannot work because of an injury caused as a direct result of the major disaster.

(b) Unemployed self-employed individual. The unemployment of an unemployed self-employed individual is caused by a major disaster if—

- (1) The individual has a "week of unemployment" as defined in § 625.2(w)(2) following the "date the major disaster began" as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or
- (3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or

(4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

(c) Unemployment is a direct result of the major disaster. For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from: (1) the physical damage or destruction of the place of employment;

(2) the physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state, or local government, in immediate response to the disaster; or

(3) lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity closed by the federal, state, or local government in immediate response to the disaster.

#### § 625.6 Weekly Amount; Jurisdictions; Reductions.

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

(1) Except as provided in paragraphs (a)(2) or (b) of this section, in computing an individual's weekly amount of DUA, qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied; and for purposes of this section, employment, wages, and self-employment which are not covered by the applicable State law shall be treated in the same manner and with the same effect as covered employment and wages, but shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law, such as, but not limited to, section 3304(a)(14)(A) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(14)(A)).

(2) For purposes of paragraph (a)(1) of this section, the base period to be utilized in computing the DUA weekly amount shall be the most recent tax year that has ended for the individual (whether an employee or self-employed) prior to the individual's unemployment that was a direct result of the

major disaster. The self-employment income to be treated as wages for purposes of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual. If an individual has not filed a tax return for the most recent tax year that has ended at the time of such individual's initial application for DUA, such individual shall have a weekly amount determined in accordance with paragraph (e)(3) of this section.

(3) As of the date of filing an initial application for DUA, family members over the age of majority, as defined under the statutes of the applicable State, who were customarily or routinely employed or self-employed as a family unit or in the same self-employment business prior to the individuals' unemployment that was a direct result of the major disaster, shall have the wages from such employment or net income from the self-employment allocated equally among such adult family members for purposes of computing a weekly amount under this paragraph (a), unless the documentation to substantiate employment or self-employment and wages earned or paid for such employment or self-employment submitted as required by paragraph (e) of this section supports a different allocation. Family members under the age of majority as of the date of filing an initial application for DUA shall have a weekly amount computed under this paragraph (a) based on the actual wages earned or paid for employment or self-employment rather than an equal allocation.

(b) If the weekly amount computed under paragraph (a) of this section is less than 50 percent of the average weekly payment of regular compensation in the State, as provided quarterly by the Department, or, if the individual has insufficient wages from employment or insufficient or no net income from self-employment (which includes individuals falling within paragraphs (a)(3) and (b)(3) of § 625.5) in the applicable base period to compute a weekly amount under paragraph (a) of this section, the individual shall be determined entitled to a weekly amount equal to 50 percent of the average weekly payment of regular compensation in the State.

(1) If an individual was customarily or routinely employed or self-employed less than full-time prior to the individual's unemployment as a direct result of the major disaster, such individual's weekly amount under this paragraph (b)(1) shall be determined by calculating the percent of time the individual was employed or self-employed compared to the customary and usual hours per week that would constitute the average per week hours for year-round full-time employment or self-employment for the occupation, then applying the percentage to the determined 50 percent of the average weekly amount of regular compensation paid in the State. The State agency shall utilize information furnished by the applicant at the time of filing an initial application for DUA and any labor market or occupational information available within the

State agency to determine the average per week hours for full-time employment or self-employment for the occupation. If the weekly amount computed for an individual under this paragraph (b)(1) is less than the weekly amount computed under paragraph (a) of this section for the individual, the individual shall be entitled to the higher weekly amount.

(2) The weekly amount so determined under paragraph (b)(1) of this section, if not an even dollar amount, shall be rounded in accordance with the applicable State law.

(c) In the Territory of Guam and the Commonwealth of the Northern Mariana Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the average of the payments of regular compensation made under all State laws referred to in § 625.2(r)(1)(i) for weeks of total unemployment in the first four of the last five completed calendar quarters immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(d) In American Samoa, Federated States of Micronesia, Republic of the Marshall Islands and the Trust Territory of the Pacific Islands, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the amount agreed upon by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the Federal Coordinating Officer, which shall approximate 50 percent of the area-wide average of the weekly wages paid to individuals in the major disaster area in the quarter immediately preceding the quarter in which the major disaster began. The weekly amount so determined, if not an even dollar amount, shall be rounded to the next higher dollar.

(e) The State agency shall immediately determine, upon the filing of an initial application for DUA, a weekly amount under the provisions of paragraphs (a) through (d) of this section, as the case may be, based on the individual's statement of employment or self-employment preceding the individual's unemployment that was a direct result of the major disaster, and wages earned or paid for such employment or self-employment. An immediate determination of a weekly amount shall also be made where, in conjunction with the filing of an initial application for DUA, the individual submits documentation substantiating employment or self-employment and wages earned or paid for such employment or self-employment, or, in the absence of documentation, where any State agency records of employment or self-employment and wages earned or paid for such employment or self-employment, justify the determination of a weekly amount. An immediate determination shall also be made based on the

individual's statement or in conjunction with the submittal of documentation in those cases where the individual was to commence employment or self-employment on or after the date the major disaster began but was prevented from doing so as a direct result of the disaster.

(1) In the case of a weekly amount determined in accordance with paragraph (e) of this section, based only on the individual's statement of earnings, the individual shall furnish documentation to substantiate the employment or self-employment or wages earned from or paid for such employment or self-employment or documentation to support that the individual was to commence employment or self-employment on or after the date the major disaster began. In either case, documentation shall be submitted within 21 calendar days of the filing of the initial application for DUA.

(2) Any individual who fails to submit documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment in accordance with paragraph (e)(1) of this section, shall be determined ineligible for the payment of DUA for any week of unemployment due to the disaster. Any weeks for which DUA was already paid on the application prior to the date of the determination of ineligibility under this paragraph (e)(2) are overpaid and a determination shall be issued in accordance with § 625.14(a). In addition, the State agency shall consider whether the individual is subject to a disqualification for fraud in accordance with the provisions set forth in § 625.14(i).

(3) For purposes of a computation of a weekly amount under paragraph (a) of this section, if an individual submits documentation to substantiate employment or self-employment in accordance with paragraph (e)(1), but not documentation of wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, the State agency shall immediately redetermine the weekly amount of DUA payable to the individual in accordance with paragraph (b) of this section.

(4) Any individual determined eligible for a weekly amount of DUA under the provisions of paragraph (e)(3) of this section may submit necessary documentation to substantiate wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual had not filed a tax return for the most recent tax year that has ended, at any time prior to the end of the disaster assistance period. A redetermination of the weekly amount payable, as previously determined under paragraph (b) of this section, shall immediately be made if the wages earned or paid for services performed in employment or self-employment reflected in such documentation is sufficient to permit a computation under paragraph (a) of this section of a weekly amount higher than was determined under paragraph (b) of this section. Any higher amount so



determined shall be applicable to all weeks during the disaster assistance period for which the individual was eligible for the payment of DUA.

(f)(1) The weekly amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of partial or part-total unemployment shall be the weekly amount determined under paragraph (a), (b), (c) or (d) of this section, as the case may be, reduced (but not below zero) by the amount of wages that the individual earned in that week as determined by applying to such wages the earnings allowance for partial or part-total employment prescribed by the applicable State law.

(2) The weekly amount of DUA payable to an unemployed self-employed individual for a week of unemployment shall be the weekly amount determined under paragraph (a), (b), (c) or (d) of this section, as the case may be, reduced (but not below zero) by the full amount of any income received during the week for the performance of services in self-employment, regardless of whether or not any services were performed during the week, by applying the earnings allowance as set forth in paragraph (f)(1) of this section. Notwithstanding the definition of "wages" for a self-employed individual under § 625.2(u), the term "any income" for purposes of this paragraph (f)(2) means gross income.

#### § 625.7 Disaster Unemployment Assistance: Duration.

DUA shall be payable to an eligible unemployed worker or eligible unemployed self-employed individual for all weeks of unemployment which begin during a Disaster Assistance Period.

#### § 625.8 Applications for Disaster Unemployment Assistance.

(a) Initial application. An initial application for DUA shall be filed by an individual with the State agency of the applicable State within 30 days after the announcement date of the major disaster as the result of which the individual became unemployed, and on a form prescribed by the Secretary which shall be furnished to the individual by the State agency. An initial application filed later than 30 days after the announcement date of the major disaster shall be accepted as timely by the State agency if the applicant had good cause for the late filing, but in no event shall an initial application be accepted by the State agency if it is filed after the expiration of the Disaster Assistance Period. If the 30th day falls on a Saturday, Sunday, or a legal holiday in the major disaster area, the 30-day time limit shall be extended to the next business day.

(b) Weekly applications. Applications for DUA for weeks of unemployment shall be filed with respect to the individual's applicable State at the times and in the manner as claims for regular compensation are filed under the applicable State law,

and on forms prescribed by the Secretary which shall be furnished to the individual by the State agency.

(c) Filing in person. (1) Except as provided in paragraph (c)(2) of this section, all applications for DUA, including initial applications, shall be filed in person.

(2) Whenever an individual has good cause for not filing any application for DUA in person, the application shall be filed at such time, in such place, and in such a manner as directed by the State agency and in accordance with part and procedures prescribed by the Secretary.

(d) IBPP. The "Interstate Benefit Payment Plan" shall apply, where appropriate, to an individual filing applications for DUA.

(e) Wage combining. The "Interstate Arrangement for Combining Employment and Wages" (part 616 of this chapter) shall apply, where appropriate, to an individual filing applications for DUA: Provided, That the "Paying State" shall be the applicable State for the individual as prescribed in § 625.12.

(f) Procedural requirements. (1) The procedures for reporting and filing applications for DUA shall be consistent with this part, and with the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services," Employment Security Manual, Part V, sections 5000 et seq. (Appendix A of this part), insofar as such standard is not inconsistent with this part.

(2) The provisions of the applicable State law which apply hereunder to applications for and the payment of DUA shall be applied consistent with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of regular compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this part.

#### § 625.9 Determinations of entitlement; notices to individual.

(a) Determination of initial application. (1) The State agency shall promptly, upon the filing of an initial application for DUA, determine whether the individual is eligible, and if the individual is found to be eligible, the weekly amount of DUA payable to the individual and the period during which DUA is payable.

(2) An individual's eligibility for DUA shall be determined, where a reliable record of employment, self-employment and wages is not obtainable, on the basis of an affidavit submitted to the State agency by the individual, and on a form prescribed by the Secretary which shall be furnished to the individual by the State agency.

(b) Determinations of weekly applications. The

State agency shall promptly, upon the filing of an application for a payment of DUA with respect to a week of unemployment, determine whether the individual is entitled to a payment of DUA with respect to that week, and, if entitled, the amount of DUA to which the individual is entitled.

(c) Redetermination. The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to regular compensation under the applicable State law shall apply to determinations pertaining to DUA.

(d) Notices to individual. The State agency shall give notice in writing to the individual, by the most expeditious method, of any determination or redetermination of an initial application, and of any determination of an application for DUA with respect to a week of unemployment which denies DUA or reduces the weekly amount initially determined to be payable, and of any redetermination of an application for DUA with respect to a week of unemployment. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determination and written notices of redeterminations with respect to claims for regular compensation.

(e) Promptness. Full payment of DUA when due shall be made with the greatest promptness that is administratively feasible.

(f) Secretary's Standard. The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for DUA, shall be consistent with this part and with the Secretary's "Standard for Claim Determinations-Separation Information," Employment Security Manual, Part V, sections 6010 et seq. (Appendix B of this part).

#### § 625.10 Appeal and review.

(a) States of the United States. (1) Any determination or redetermination made pursuant to § 625.9 by the State agency of a State (other than the State agency of the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, or the Trust Territory of the Pacific Islands) may be appealed by the applicant in accordance with the applicable State law to the first-stage administrative appellate authority in the same manner and to the same extent as a determination or redetermination of a right to regular compensation may be appealed, except that the period for appealing shall be 60 days from the date the determination or redetermination is issued or mailed instead of the appeal

period provided for in the applicable State law. Any decision on a DUA first-stage appeal must be made and issued within 30 days after receipt of the appeal by the State.

(2) Notice of the decision on appeal and the reasons therefore, shall be given to the individual by delivering the notice to such individual personally or by mailing it to the individual's last known address, whichever is most expeditious. The decision shall contain information as to the individual's right to review of the decision by the appropriate Regional Administrator, Employment and Training Administration, if requested within 15 days after the decision was mailed or delivered in person to the individual. The notice will include the manner of requesting such review, and the complete address of the Regional Administrator. Notice of the decision on appeal shall be given also to the State agency (with the same notice of right to review) and to the appropriate Regional Administrator.

(b) Guam, American Samoa, and the Trust Territory of the Pacific Islands. (1) In the case of an appeal by an individual from a determination or redetermination by the State agency of the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, or the Trust Territory of the Pacific Islands, the individual shall be entitled to a hearing and decision in accordance with § 625.30 of this part.

(2) Notice of the referee's decision and the reasons therefor, shall be given to the individual by delivering the notice to the individual personally or by mailing it to the individual's last known address, whichever is most expeditious. The notice of decision shall contain information as to the individual's right to review of the decision by the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco), and the manner of obtaining such review, including the address of the Regional Administrator. Notice of the decision on appeal shall be given also to the State agency and to the Regional Administrator.

(c) Review by Regional by Regional Administrator. (1) The appropriate Regional Administrator, Employment and Training Administration, upon request for review by an applicant or the State agency shall, or upon the Regional Administrator's own motion may, review a decision on appeal issued pursuant to paragraph (a) or (b) of this section.

(2) Any request for review by an applicant or a State agency shall be filed, and any review on the Regional Administrator's own motion shall be undertaken, within 15 days after notice of the decision on appeal was delivered or mailed to the individual.

(3)(i) A request for review by an individual may be filed with the appropriate State agency, which shall forward the request to the appropriate Regional Administrator, Employment and Training Administration,

or may be filed directly with the appropriate Regional Administrator.

(ii) A request for review by a State agency shall be filed with the appropriate Regional Administrator, and a copy shall be served on the individual by delivery to the individual personally or by mail to the individual's last known address.

(iii) When a Regional Administrator undertakes a review of a decision on the Regional Administrator's own motion, notice thereof shall be served promptly on the individual and the State agency.

(iv) Whenever review by a Regional Administrator is undertaken pursuant to an appeal or on the Regional Administrator's own motion, the State agency shall promptly forward to the Regional Administrator the entire record of the case.

(v) Where service on the individual is required by paragraph (c)(3)(ii) of this section, adequate proof of service shall be furnished for the record before the Regional Administrator, and be a condition of the Regional Administrator undertaking review pursuant to this paragraph.

(4) The decision of the Regional Administrator on review shall be rendered promptly, and not later than the earlier of -  
(i) 45 days after the appeal is received or is undertaken by the Regional Administrator, or

(ii) 90 days from the date the individual's appeal from the determination was received by the State agency.

(5) Notice of the Regional Administrator's decision shall be mailed promptly to the last known address of the applicable State, and to the Director, Unemployment Insurance Service. The decision of the Regional Administrator shall be the final decision under the Act and this part, unless there is further review by the Assistant Secretary as provided in paragraph (d) of this section.

(d) Further review by the Assistant Secretary. (1) The Assistant Secretary for Employment and Training on his own motion may review any decision by a Regional Administrator issued pursuant to paragraph (c) of this section.

(2) Notice of a motion for review by the Assistant Secretary shall be given to the applicant, the State agency of the applicable State, the appropriate Regional Administrator, and the Director, Unemployment Insurance Service.

(3) When the Regional Administrator and the State agency are notified of the Assistant Secretary's motion for review, they shall forward all records in the case to the Assistant Secretary.

(4) Review by the Assistant Secretary shall be solely on the record in the case, any other written contentions or evidence requested by the Assistant Secretary, any further evidence or arguments offered by the individual, the State agency, the Regional Administrator, or the Director, Unemployment Insurance Service, which are mailed to the

Assistant Secretary within 15 days after mailing the notice of motion for review.

(5) Upon review of a case under this paragraph, the Assistant Secretary may affirm, modify, or reverse the decision of the Regional Administrator, and may remand the case for further proceedings and decision in accordance with Assistant Secretary's decision.

(6) The decision of the Assistant Secretary shall be made promptly, and notice thereof shall be sent to the applicant, the State agency, the Regional Administrator, and the Director, Unemployment Insurance Service.

(7) The decision of the Assistant Secretary shall be final and conclusive, and binding on all interested parties, and shall be a precedent applicable throughout the States.

(e) Procedural requirements. (1) All decisions on first-stage appeals from determinations or redeterminations by the State agencies must be made within 30 days of the appeal; therefore, the Secretary's "Standard for Appeals Promptness-Unemployment Compensation" in Part 650 of this chapter shall not apply to the DUA program.

(2) The provisions on right of appeal and opportunity for hearing and review with respect to applications for DUA shall be consistent with this part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).

(3) Any petition or other matter required to be filed within a time limit under this section shall be deemed to be filed at the time it is delivered to an appropriate office, or at the time of the postmark if it is mailed via the United States Postal Service to an appropriate office.

(4) If any limited time period specific in this section ends on a Saturday, Sunday, or a legal holiday in the major disaster area, the time limit shall be extended to the next business day.

§ 625.11 Provisions of State law applicable. The terms and conditions of the State law of the applicable State for an individual, which apply to claims for, and the payment of regular compensation, shall apply to applications for, and the payment of, DUA to each such individual, only as specifically set forth in the provisions of this part.

§ 625.12 The applicable State for an individual.

(a) Applicable State. The applicable State for an individual shall be that State in which the individual's unemployment is the result of a major disaster.

(b) Limitation. DUA is payable to an individual only by an applicable State as determined pursuant to paragraph (a) of this section, and-- (1) Only pursuant to an Agreement entered into pursuant to the Act and this part, and with respect to weeks in which the Agreement is in effect; and

(2) Only with respect to weeks of unemployment that begin during a Disaster Assistance Period.

§ 625.13 Restrictions on entitlement; disqualification.

(a) Income reductions. The amount of DUA payable to an individual for a week of unemployment, as computed pursuant to § 625.6 shall be reduced by the amount of any of the following that an individual has received for the week or would receive for the week if the individual filed a claim or application therefore and took all procedural steps necessary under the appropriate law, contract, or policy to receive such payment:

(1) Any benefits or insurance proceeds from any source not defined as "compensation" under § 625.2(d) for loss of wages due to illness or disability;

(2) A supplemental unemployment benefit pursuant to a collective bargaining agreement.

(3) Private income protection insurance;

(4) Any workers' compensation by virtue of the death of the head of the household as the result of the major disaster in the major disaster area, prorated by weeks, if the individual has become the head of the household and is seeking suitable work because the head of household died as the result of the major disaster in the major disaster area; and

(5) The prorated amount of a retirement pension or annuity under a public or private retirement plan or system, prorated, where necessary, by weeks, but only if, and to the extent that, such amount would be deducted from regular compensation payable under the applicable State law.

(6) The prorated amount of primary benefits under Title II of the Social Security Act, but only to the extent that such benefits would be deducted from regular compensation if payable to the individual under the applicable State law.

(b) Disqualification. (1) An individual shall not be entitled to DUA for any week after the week in which the individual is reemployed in a suitable position.

(2) An individual who refuses without good cause to accept a bona fide offer of reemployment in a position suitable to the individual, or to investigate or accept a referral to a position which is suitable to an available to the individual, shall not be entitled to DUA with respect to the week in which such refusal occurs or in any subsequent week in the Disaster Assistance Period. For the purposes of this paragraph, a position shall not be deemed to be suitable to and available to the individual, shall not be entitled to DUA with respect to the week in which such refusal occurs or in any subsequent week in the Disaster Assistance Period. For the purposes of this paragraph, a position shall not be deemed to be suitable for an individual if the circumstances present any unusual risk to the health, safety, or morals of the individual, if it is impracticable for the individual to accept the position, or if acceptance for the position would, as to the individual, be inconsistent with any labor standard in section 3304(a)(5) of the Federal

Unemployment Tax Act, 26 U.S.C. 3304(a)(5), or the comparable provisions of the applicable State law.

§ 625.14 Overpayments; disqualification for fraud.

(a) Finding and repayment. If the State agency of the applicable State finds that an individual has received a payment of DUA to which the individual was not entitled under the Act and this part, whether or not the payment was due to the individual's fault or misrepresentation, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(b) Recovery by offset. (1) The State agency shall recover, insofar as is possible, the amount of any outstanding overpayment of DUA made to the individual by the State, by deductions from any DUA payable to the individual under the Act and this part, or from any compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) The State agency shall also recover, insofar as possible, the amount of any outstanding overpayment of DUA made to the individual by another State by deductions from any DUA payable by the State agency to the individual under the Act and this part, or from any compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from an assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) If the State has in effect any agreement to implement the cross-program offset provisions of section 303(g)(2) of the Social Security Act (42 U.S.C. 503(g)(2)), the State shall apply the provisions of such agreement to the recovery of outstanding DUA overpayments.

(c) Debts due the United States. DUA payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person.

(d) Recovered overpayments. Overpayments recovered in any manner shall be credited or returned, as

the case may be, to the appropriate account of the United States.

(e) Application of State law. Any provision of State law authorizing waiver of recovery of overpayments of compensation shall not be applicable to DUA.

(f) Final decision. Recovery of any overpayment of DUA shall not be enforced by the State agency until the determination establishing the overpayment has become final, or if appeal is taken from the determination, until the decision after opportunity for a fair hearing has become final.

(g) Procedural requirements. (1) The provisions of paragraphs (c), (d), and (f) of § 625.9 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 625.10 shall apply to determinations and redeterminations made pursuant to this section.

(h) Fraud detection and prevention. Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of DUA shall be, as a minimum, commensurate with the procedures adopted by the State with respect to regular compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection," Employment Security Manual, Part V sections 7510 et seq. (Appendix C of this part).

(i) Disqualification for fraud. Any individual who, with respect to a major disaster, makes or causes another to make false statement or misrepresentation of a material fact, knowing it to be false, or knowingly fails or causes another to fail to disclose a material fact, in order to obtain for the individual or any other person a payment of DUA to which the individual or any other person is not entitled, shall be disqualified as follows:

(1) If the false statement, misrepresentation, or nondisclosure pertains to all initial application for DUA—

(i) The individual making the false statement, misrepresentation, or non-disclosure shall be disqualified from the receipt of any DUA with respect to that major disaster; and

(ii) If the false statement, misrepresentation, or nondisclosure was made on behalf of another individual, and was known to such other individual to be a false statement, misrepresentation, or nondisclosure, such other individual shall be disqualified from the receipt of any DUA with respect to that major disaster; and

(2) If the false statement, misrepresentation, or nondisclosure pertains to a week for which application for a payment of DUA is made—

(i) The individual making the false statement, misrepresentation, or nondisclosure shall be disqualified from the receipt of DUA for that week and the first two compensable weeks in the Disaster Assistance Period that

immediately follow that week, with respect to which the individual is otherwise entitled to a payment of DUA; and

(ii) If the false statement, misrepresentation, or nondisclosure was made on behalf of another individual, and was known to such other individual to be a false statement, misrepresentation, or nondisclosure, such other individual shall be disqualified from the receipt of DUA for that week and the first two compensable weeks in the Disaster Assistance Period that immediately follow that week, with respect to which the individual is otherwise entitled to a payment of DUA.

(j) Criminal penalties. The provisions of this section on recovery of overpayments and disqualification for fraudulently claiming or receiving any DUA to which an individual was not entitled under the Act and this part shall be in addition to and shall not preclude any applicable criminal prosecution and penalties under State or Federal law.

§ 625.15 Inviolate rights to DUA.

Except as specifically provided in this part, the right of individuals to DUA shall be protected in the same manner and to the same extent as the rights of persons to regular unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for DUA from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to DUA. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for and receiving any right to DUA.

§ 625.16 Record keeping; disclosure of information.

(a) Record keeping. Each State agency will make and maintain records pertaining to the administration of the Act as the Secretary requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Secretary may designate or as may be required by law.

(b) Disclosure of information. Information in records made and maintained by a State agency in administering the Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation and the entitlement of individuals thereto may be disclosed under the applicable State law, and consistently with section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1). This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to the United States Department of Labor, or in the case of information, reports and studies requested pursuant to § 625.19, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the United

States Department of Labor promulgated thereunder.

§ 625.17 Announcement of the beginning of a Disaster Assistance Period.

Whenever a major disaster is declared in a State, the State agency shall promptly announce throughout the major disaster area by all appropriate news media that individuals who are unemployed as the result of the major disaster may be entitled to DUA; that they should file initial applications for DUA as soon as possible, but not later than the 30th day after the announcement date; the beginning date of the Disaster Assistance Period; and where individuals may obtain further information and file applications for DUA.

§ 625.18 Public access to Agreements.

The State agency of a State will make available to any individual or organization of a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 625.19 Information, reports and studies.

(a) Routine responses. State agencies shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this part.

(b) Final Report. In addition to such other reports as may be required by the Secretary, within 60 days after all payments of Disaster Unemployment Assistance as the result of a major disaster in the State have been made, the State agency shall submit a final report to the Secretary. A final report shall contain a narrative summary, a chronological list of significant events, pertinent statistics about the Disaster Unemployment Assistance provided to disaster victims, brief statements of major problems encountered, discussion of lessons learned, and suggestions for improvement of the program during future major disasters.

§ 625.20 Saving clause.

The regulations in this part do not apply to applications, determinations, hearings, or other administrative or judicial proceedings, with respect to any major disaster declared prior to November 23, 1988, and such applications, determinations, hearings, or other administrative or judicial proceeding shall remain subject to the Act and the Regulations in this part issued thereunder which were in effect prior to that date.

§ 625.30 Appeal Procedures for Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated

States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.

(a) Designation of referee. The Director of the Unemployment Insurance Service shall designate a referee of a State agency to hear and decide appeals under this section from determinations and redeterminations by the State agencies of the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.

(b) Appeals to referee. (1) A DUA applicant may appeal from a determination or redetermination issued by the State agency of the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, or the Trust Territory of the Pacific Islands within 60 days after the mailing of notice and a copy of such determination or redetermination to such applicant's last known address, or in the absence of mailing within 60 days after delivery in person thereof to such applicant. The appeal shall be in writing and may be filed with any office of the State agency.

(2) Notice that an appeal has been filed may be given or mailed, in the discretion of the referee, to any person who has offered or is believed to have evidence with respect to the claim.

(3) An appeal shall be promptly scheduled and heard, in order that a decision on the appeal can be issued within 30 days after receipt of the appeal by the State agency. Written notice of hearing, specifying the time and place thereof and those questions known to be in dispute, shall be given or mailed to the applicant, the State agency, and any person who has offered or is believed to have evidence with respect to the claim seven days or more before the hearing, except that a shorter notice period may be used with the consent of the applicant.

(c) Conduct of hearings. Hearings before the referee shall be informal, fair, and impartial, and shall be conducted in such manner as may be best suited to determine the DUA applicants' right to compensation. Hearings shall be open to the public unless sufficient cause for a closed hearing is shown. The referee shall open a hearing by ascertaining and summarizing the issue or issues involved in the appeal. The applicant may examine and cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded such applicant, and such argument shall be made part of the record. The referee shall give such applicant, if not represented by counsel or other representative, every assistance that does not interfere with the impartial discharge of the referee's duties. The referee may examine such applicant and other witnesses to such extent as the referee deems necessary. Any issue involved in the claim shall be considered and passed upon even though such issue was not set forth as a ground of appeal.

(d) Evidence. Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence, may be accepted. Any official record of the State agency, including reports submitted in connection with administration of the DUA program, may be included in the record if the applicant is given an opportunity to examine and rebut the same. A written statement under oath or affirmation may be accepted when it appears impossible or unduly burdensome to require the attendance of a witness, but a DUA applicant adversely affected by such a statement must be given the opportunity to examine such statement, to comment on or rebut any or all portions thereof, and whenever possible to cross-examine a witness whose testimony has been introduced in written form by submitting written questions to be answered in writing.

(e) Record. All oral testimony before the referee shall be taken under oath or affirmation and a transcript thereof shall be made and kept. Such transcript together with all exhibits, papers, and requests filed in the proceeding shall constitute the record for decision.

(f) Withdrawal of appeal. A DUA applicant who has filed an appeal may withdraw such appeal with the approval of the referee.

(g) Nonappearance of DUA applicant. Failure of a DUA applicant to appear at a hearing shall not result in a decision being automatically rendered against such applicant. The referee shall render a decision on the basis of whatever evidence is properly before him/her unless there appears to be a good reason for continuing the hearing. An applicant who fails to appear at a hearing with respect to his/her appeal may within seven days thereafter petition for a reopening of the hearing. Such petition shall be granted if it appears to the referee that such applicant has shown good cause for his/her failure to attend.

(h) Notice of referee's decision and further review.

(1) Decision. A copy of the referee's decision, which shall include findings and conclusions, shall promptly be given or mailed to the applicant, the State agency, and to the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco). The decision of the referee shall be accompanied by an explanation of the right of such applicant or State agency to request review by the Regional Administrator and the time and manner in which such review may be instituted, as provided in paragraph (a)(2) of § 625.10.

(2) Time limit for decision. A decision on an appeal to a referee under this section shall be made and issued by the referee not later than 30 days after receipt of the appeal by the State agency.

(3) Further review. Further review by the Regional Administrator or the Assistant Secretary with respect to an

appeal under this section shall be in accordance with paragraphs (c) and (d) of § 625.10.

(i) Consolidation of appeals. The referee may consolidate appeals and conduct joint hearings thereon where the same or substantially similar evidence is relevant and material to the matters in issue. Reasonable notice of consolidation and the time and place of hearing shall be given or mailed to the applicants or their representatives, the State agency, and to persons who have offered or are believed to have evidence with respect to the DUA claims.

(j) Representation. A DUA applicant may be represented by counsel or other representative in any proceedings before the referee or the Regional Administrator. Any such representative may appear at any hearing or take any other action which such applicant may take under this part. The referee, for cause, may bar any person from representing an applicant, in which event such action shall be set forth in the record. No representative shall charge an applicant more than an amount fixed by the referee for representing the applicant in any proceeding under this section.

(k) Postponement, continuance, and adjournment of hearings. A hearing before the referee shall be postponed, continued, or adjourned when such action is necessary to afford a DUA applicant reasonable opportunity for a fair hearing. In such case notice of the subsequent hearing shall be given to any person who received notice of the prior hearing.

(l) Information from agency records. Information shall be available to a DUA applicant, either from the records of the State agency or as obtained in any proceeding herein provided for, to the extent necessary for proper presentation of his/her case. All requests for information shall state the nature of the information desired as clearly as possible and shall be in writing unless made at a hearing.

(m) Filing of decisions. Copies of all decisions of the referee shall be kept on file at his/her office or agency for at least 3 years.

APPENDIX A TO PART 625 - STANDARD FOR CLAIM FILING, CLAIMANT REPORTING, JOB FINDING, AND EMPLOYMENT SERVICES

*Employment Security Manual (Part V, Sections 5000 5004)  
5000 Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services*

A. *Federal law requirements*. Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for: "Payment of unemployment compensation solely

through public employment offices or such other agencies as the Secretary may approve."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law provide for: "Expenditure of all money with drawn from an unemployment fund of such State, in the payment of unemployment compensation \* \* \*"

Section 303(a)(1) of the Social Security Act requires that the State law provide for: "Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

**B. Secretary's interpretation of federal law requirements:**

1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure (a) the payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for a: Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such State law.

**5001 Claim Filing and Claimant Reporting Requirements Designed to Satisfy Secretary's Interpretation**

**A. Claim filing—total or part-total unemployment:** 1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly or biweekly, in person or by mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person: a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year and b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

(1) The conditions or circumstances of his separation from employment;

(2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be

undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;

(3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or

(4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances: a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person; b. Conditions make it impracticable for the agency to take claims in person; c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment; d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediately following his period of partial unemployment so long as he remains attached to his regular employer.

**B. Claim Filing--partial unemployment.** Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary fulltime hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the circumstances set forth in section A 3, filing by mail must be permitted, and in the circumstances set forth in section A 2 b, filing in person may be required.

**5002 Requirement For Job Finding, Placement, and other Employment Services Designed to Satisfy Secretary's Interpretation**

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency: 1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public



employment office most accessible to him; or

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him in which case the claims personnel in the office in which the claimant files his claim are to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area, if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel are required to so arrange and coordinate the contracts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or counseling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) his failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee charging placement facility such as a union or a professional association; and (2) any information which

becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

#### 5004 *Evaluation of Alternative State Provisions*

If the State law provisions do not conform to the "suggested State law requirements" set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated affect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

[56 FR 558, Jan. 5, 1990]

#### APPENDIX B TO PART 625--STANDARD FOR CLAIM DETERMINATIONS--SEPARATION INFORMATION

*Employment Security Manual* (Part V, Sections 6010-6015)

6010--6019 *Standard for Claim Determinations--Separation Information*

6010 *Federal Law Requirements*. Section 303(a)(1) of the Social Security Act requires that a State law include provision for: "Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for: "Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for: "Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation ...."

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements*. The secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 Criteria for Review of State Law Conformity with Federal Requirements. In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individual to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 Claim Determinations Requirements Designed To Meet Department of Labor Criteria.

A. Investigation of claims. The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the

investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. Recording of facts. The agency must keep a written record of the facts considered in reaching its determinations.

C. Determination notices

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his application identification card or otherwise in writing.

c. Any other determination which adversely affects<sup>1</sup> his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2 f (1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent

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<sup>1</sup>A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2 f (2) and 2 h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimants weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. Base period wages. The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. Employer name. The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. Explanation of benefit formula--weekly and maximum benefit amounts. Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to

which the claimant is entitled. The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. Benefit year. An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. Information as to benefits for partial unemployment. There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimants to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. Deductions from weekly benefits

(1) Earnings. Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c(1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) Other deductions

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason

for the deduction, the method of computing it in sufficient detail to enable him to verify accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made, (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he may request a written notice of determination before he takes any such action.

g. Seasonality factors. If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. Disqualification or ineligibility. If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. Appeal rights. The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for-example, "For other information about your (appeal), (protest), (redetermination) rights, see pages \_\_\_\_ to \_\_\_\_ of the \_\_\_\_\_ (name of pamphlet or booklet) heretofore furnished to you."

#### 6014 Separation Information Requirements Designed To Meet Department of Labor Criteria

A. Information to agency. Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. Information of worker. 1. Information required to

be given. Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. Methods for giving information. The information and instructions required above may be given in any of the following ways:

a. Posters prominently displayed in the employer's establishment. The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. Leaflets. Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. Individual notices. Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

#### 6015 Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.

If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

[55 FR 559, Jan. 5, 1990]

#### APPENDIX C TO PART 625--STANDARD FOR FRAUD AND OVERPAYMENT DETECTION

*Employment Security Manual* (Part V, Sections 7510--7515)

7510--7519 *Standard for Fraud and Overpayment Detection*

7510 Federal Law Requirements. Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration \*\*\* as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 1603(a)(4) of the Internal Revenue Code and section 3030(a)(5) of the Social Security Act require that a State law include provision for: "Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation \* \* \*"

Section 1607(h) of the Internal Revenue Code defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

7511 The Secretary's Interpretation of Federal Law Requirements. The Secretary of Labor interprets the above sections to require that a State law include provision for such methods of administration as are, within reason, calculated (1)

to detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.

7513 Criteria for Review of State Conformity With Federal Requirements. In determining State conformity with the above requirements of the Internal Revenue Code and the Social Security Act, as interpreted by the Secretary of Labor, the following criteria will be applied:

A. *Are investigations required to be made after the payment of benefits, (or, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants' entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency's procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual or unit, as a basic function, the responsibility of making or functionally directing such investigations?*

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or alternatively, advise and assist the operating units in the performance of such functions or both;
2. Perform consultative services with respect to

methods and procedures for the prevention and detection of fraud, and

3. Perform other services which are closely related to the above. Although a State agency is expected to make a fulltime assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or noncovered work) and claiming of benefits (including benefit payments in which the agency acted as agency for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are commonly made either by post-audit or by industry surveys. The so called "post-audit" is a matching of central office wage-record files against benefit payments for the same period. "Industry surveys" or "mass audits" are done in some States by going directly to employers for payroll information to be checked against concurrent benefit lists. A plan

A. of investigation based on a sample postaudit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. *Are adequate records maintained by which the results of investigations may be evaluated?*

Explanation: To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records also will provide the basis for drawing a clear distinction between fraud and error.

C. *Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter fraud by claimants?*

Explanation: To meet this criterion, the State agency must issue adequate material on claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and

understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

7615 Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments. If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.

[55 FR 562, Jan. 5, 1990]



[NOTE: This Glossary only contains terms which are not already defined in 20 CFR Part 625.2, "Definitions", of the Disaster Unemployment Assistance (DUA) program regulations.]

"Date of the Disaster or Date of Unemployment" means the first day that the claimant is unable to work as a direct result of the major disaster (UIPL 43-91, 20 CFR 625.6).

"Department" means the U.S. Department of Labor and the Employment and Training Administration (ETA) within the Department. Under Secretary's Order No. 4-75 (40 FR 18515), ETA has authority to administer the DUA Program. This usage is commonly understood by customers, such as State agencies, in making reference to the Department in various documents issued to implement the DUA Program, and is a common practice in all Departmental issuances.

"Disqualification" means an applicant's continued eligibility for DUA. When it no longer exists, the applicant is no longer unemployed due to the major disaster. Furthermore, an individual who refuses without good cause to accept a bona fide offer of reemployment in a position suitable to the individual, or to investigate or accept a referral to a position which is suitable to and available to the individual shall not be entitled to DUA with respect to the week in which such refusal occurs or in any subsequent week in disaster assistance period. An individual who is entitled or has not exhausted a UI regular claim is not entitled to DUA (20 CFR 625.4).

"Eligibility requirements" means the individual is a worker or an unemployed self-employed individual (20 CFR 625.4(c)). The individual's unemployment with respect to that week is caused by a major disaster, as provided in 20 CFR 625.5. The individual has filed a timely initial application for DUA and, as appropriate, a timely application for a payment of DUA with respect to that week (20 CFR 625.4(e)). That week is a week of unemployment for that individual (20 CFR 625.4(f)). The individual is able to work and available for work within the meaning of the applicable State law (aliens must be legally authorized to work in the U.S. to meet this requirement). Provided that an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment (20 CFR 625.4(g)). The individual has not refused a bona fide offer of employment in a suitable position, or refused without good cause to resume or commence suitable self-employment, if that employment or self-employment could have been undertaken in that week or in any prior week in the disaster assistance period (20 CFR 625.4(h)). The individual must be actively seeking work unless the State Administrator waives work search requirements.

"FEMA" means the Federal Emergency Management Agency, the federal agency that coordinates activities and assistance programs when major disasters are declared.

"Head of household and major support interpretation" means the deceased wage-earning or self-employed member of a household who shared a common home with the applicant and who legally provided, through employment for wages or self-employment, the major support for the household. Major support means the deceased's employment for wages or self-employment provided more than half of the household income or means of livelihood, or would have but for unemployment.



"Incident period" means the time interval during which the disaster-causing incident occurs. The incident period will be established by FEMA in the FEMA-State agreement and published in the Federal Register (44 CFR 206.32(f)).

"Incidental income" means "casual" wages earned by services performed for another or in self-employment. This "casual" employment would not represent the individual's principal source of income and means of livelihood because it is not equivalent to those occupational activities by which other individuals in the area earn their livelihood. Accordingly, earnings of full time students who work part time or assist in the operation of the business or farm would represent only incidental income rather than the means of their livelihood.

"Marketable product" means any product produced in the agricultural industry and/or by a farming employer that is legally available for sale by the farming employer or industry.

"Migrant and seasonal worker" means, in general, a migrant worker unemployed as a result of a major disaster: an individual who worked (or was scheduled to work) for another as an employee in the major disaster area at the time of such major disaster and, due directly to the major disaster, no longer has a job, or cannot reach the place of work, or cannot perform the job because of damage to the place of work.

"Partial Unemployment" means applicant works less than full-time hours and has earnings less than maximum allowed under State law for his/her regular employer (20 CFR 625.2(w)).

"Part-total unemployment" means a week of otherwise total unemployment during which the individual has odd jobs or subsidiary work and works less than full-time hours and has earnings less than maximum allowed under State law (20 CFR 625.2(w)).

"Stafford Act" means "The Robert T. Stafford Disaster Relief and Emergency Assistance Act (formerly the Disaster Relief Act of 1974)" (42 U.S.C. 5121 note).

Date:

RE: DUA Disaster No. 1410-DR Final Report

Dear \_\_\_\_\_:

In compliance with Part 625.19(b) of Chapter V of Title 20, Code of Federal Regulations, Disaster Unemployment Assistance, I am enclosing our "Report to the Secretary" covering WV Disaster FEMA-1410-DR.

Sincerely,

Commissioner

Enclosure

**FINAL REPORT**  
**DISASTER NO. FEMA 1410-DR-WV**

WEST VIRGINIA  
BUREAU OF EMPLOYMENT PROGRAMS  
Robert J. Smith, Commissioner  
112 California Avenue  
Charleston, WV 25305-0112

**NARRATIVE SUMMARY**

On May 2, 2002, severe rains and storms began in the southern part of our state. Damage was sufficient to warrant Governor Bob Wise's request for Disaster Assistance.

On May 5, 2002, President Bush declared the four (4) counties of McDowell, Mercer, Mingo, and Wyoming to be major disaster areas for the purpose of paying Disaster Unemployment Assistance. Four amendments followed, adding the two (2) counties of Kanawha and Raleigh.

The President's declarations made Disaster Unemployment Assistance (DUA) available to all eligible affected workers. The Federal Emergency Management Agency set the incident period between May 2 and May 20, 2002. The Disaster Assistance Period began May 5, 2002, and ran for twenty-six weeks through November 2, 2002.

Individuals in two (2) counties filed for assistance; McDowell and Mercer. All but one claim was filed through our Welch local office.

There were a total of 96 weeks paid. The average weekly West Virginia DUA payment was \$121. The average total amount paid to the 19 individuals with approved claims was \$579. The average claim payment length was 5 weeks.

The predominant group that receive DUA were those who did not have sufficient wages credits to qualify for regular benefits.

There were no major problems encountered during this disaster, although the Welch local office had to be relocated due to flood damage.

Administrative cost were \$2,166.00 as of October 31, 2002, which is 19.8% of benefits paid. Due to administrative cost incurred exceeding 15%, we have requested transfer funds as suggested in RFM No. 5-01. This request was made via email to our regional office dated November 14, 2002.

We anticipate some additional cost will occur in the quarter ending December 31, 2002, for reports, close out activities, etc. Time charges will stop on December 31, 2002, and final accounting reports will be issued on the month of December 31, 2002.

**BREAKDOWN OF SIGNIFICANT EVENTS**

May 2, 2002	Severe rains and storms began
May 3, 2002	Governor Bob Wise requested Disaster Assistance
May 5, 2002	President Bush signed disaster declaration
May 8, 2002	SESA announcement via press release. Press release also posted to Website.
May 29, 2002	SESA announcement via press release that the deadline for filing for DUA is approaching
June 7, 2002	Latest timely application for filing in four counties
June 13, 2002	SESA announcement via press release Two additional counties, Kanawha and Raleigh added for individual assistance.
July 6, 2002	SESA announcement via press release that the deadline for filing for DUA is approaching for two additional counties.
July 15, 2002	Latest timely application for Kanawha and Raleigh counties.
November 2, 2002	End of Disaster Assistance Period
November 12, 2002	Last payment made

**STATISTICS**

**◆ Benefit Payment Statistics As Of November 30, 2002:**

Applications Received	27
Applications Approved	19
Applications Disapproved	8
Total Number of Weeks Paid	96
Total Benefits Paid	\$11,002.00
Total Average Amount Paid Per Approved Claimant	\$579
Total Average Number of Weeks Filed for Approved Claims	5

**◆ Appeal Activities**

Lower Appeals	3
Higher Appeals	0

**◆ Administration Costs (as of October 31, 2002)**

Administrative Expenses	\$2,166.77
Administrative Percentages	19.8%

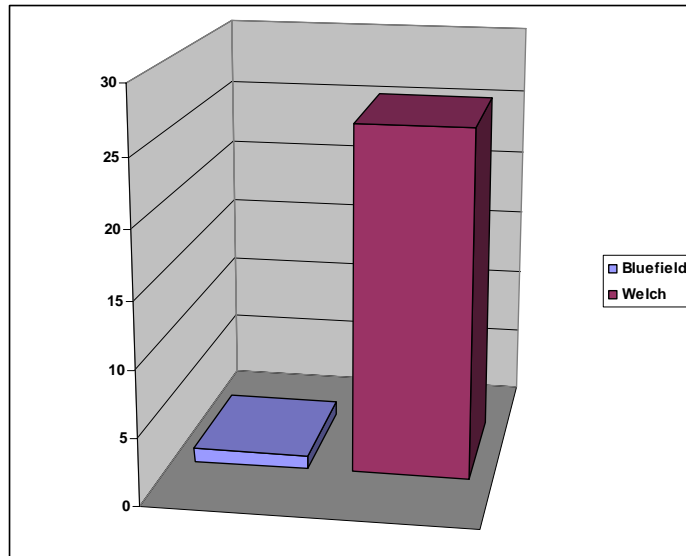
**DISASTER ACTIVITY**

**FEMA#1410**

INCIDENT: Flooding, severe storms and landslides  
COUNTIES: Kanawha, McDowell, Mercer, Mingo, Raleigh, and Wyoming  
INCIDENT PERIOD: May 2, through May 20, 2002  
DECLARATION DATE: May 5, 2002  
INITIAL ANNOUNCEMENT: May 8, 2002  
INITIAL CLAIMS: 27  
APPLICATIONS APPROVED: 19  
APPLICATIONS DENIED: 8  
WEEKS COMPENSATED: 96  
APPEALS: 3  
OVERPAYMENTS: 2

DUA CLAIMANT AND DUA BENEFITS BY LOCAL OFFICE

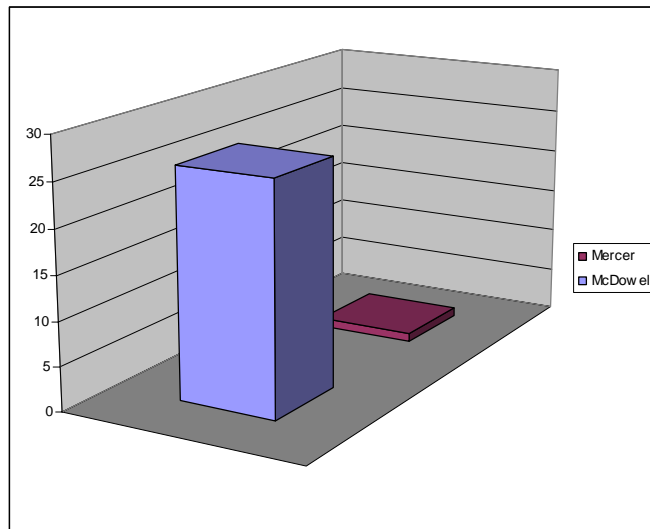
Office Number of Claimants Total Amount Paid		
Bluefield	1	\$0.00
Welch	26	\$11,002.00
Total	27	\$11,002.00





DUA CLAIMS BY COUNTY

COUNTY TOTAL CLAIMS FILED	
McDowell	26
Mercer	1
Total	27



FACT SHEET (R: 10/02)

## DISASTER UNEMPLOYMENT ASSISTANCE (DUA)

### I. Program or Activity Title

Disaster Unemployment Assistance (DUA) Program.

### II. Purpose

The major objective is to provide assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster and who are not eligible for regular state unemployment compensation.

### III. Legislative or Other Authority

Public Law 100-707, Section 410, Robert T. Stafford Disaster Relief and Emergency Assistance Amendments of 1988; Executive Order 12673; and the delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor. Title 20, Chapter V, Part 625, Code of Federal Regulations (20 CFR 625), as amended.

### IV. Administrative Structure

The Office of Workforce Security (OWS), Employment and Training Administration, has responsibility for administration of the DUA program in states in which the Governor has entered into an agreement with the Secretary of Labor for purposes of Section 410 of the Act. States administer the DUA program as agents of the Federal government. OWS maintains oversight responsibility. Funds are provided by the Federal Management Agency (FEMA) for payment of DUA through the state workforce agency system.

### V. Description of Program

DUA is a permanent program which provides assistance to those individuals suffering the loss or interruption of employment that has been their principal source of income and livelihood. Based upon the request of the Governor, the President may declare that a major disaster exists and define those areas in the state that are eligible for Federal assistance. Upon a Presidential declaration of a major disaster, the state agency will announce the availability of DUA and the places where disaster victims should apply for assistance. Benefits under DUA are wholly federally financed.

### VI. Eligibility Requirements

Payment of DUA will be made to an unemployed worker or unemployed self-employed individual if, as a direct result of

the major disaster, individuals: (1) no longer have a job or cannot perform regular services; (2) are unable to reach the place of work or self-employment location; (3) were to commence work or self-employment and do not have a job or self-employment or are unable to reach the job or self-employment; or (4) cannot work or perform services because of a disaster incurred injury. In addition, an unemployed worker also includes any individual who has become the breadwinner or major support for the household because the head of household died as a direct result of the major disaster.

Unemployment is considered to be a direct result of the major disaster if it is an immediate result of the disaster itself, and not a result of a longer chain of events hastened by the disaster or having a ripple effect throughout the economy. Unemployment must have resulted from: (1) the physical damage or destruction of the place of employment; (2) the physical inaccessibility of the place of employment in the disaster area due to its closure by the federal, state or local government in immediate response to the disaster, or (3) lack of work or loss of revenues, by an employer or self-employed individual, of at least a majority of revenue or income from an entity in the disaster area that was damaged, destroyed, or an entity in the disaster area closed by the federal, state or government.

### VII. Weekly Amount Payable

The DUA weekly amount is computed in accordance with the applicable state law formula used to compute weekly amounts under the state's regular unemployment insurance (UI) program, except that the minimum weekly DUA amount payable in most cases is 50 percent of the average weekly UI amount paid in the state. In making the computation, all covered and uncovered employment is included.

The weekly DUA amount, payable to an individual for a week is reduced by wages earned (or income received by self-employed) in such week in accordance with state law provisions. Reduction will also be made by the amount of supplemental unemployment benefits, private income protection insurance, or any other type of benefit for loss of wages due to illness or disability that the individual receives or would receive for such week by properly applying. Receipt of pension amounts is also treated in accordance with the provisions of state law.

DUA is available to an individual as long as the individual's unemployment caused by the major disaster continues but no longer than 26 weeks after the declaration of the major disaster.



<b>(PENNSYLVANIA)</b>					FOR OFFICE USE					
<b>INITIAL APPLICATION FOR DISASTER UNEMPLOYMENT ASSISTANCE – DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT OF 1988 (Title I, P.L. 100-707)</b>					PRIMARY DOT CODE		SIC CODE		DISASTER ANNOUNCEMENT DATE	
					APPLICANT'S NAME (Last, First, Middle)					
ADDRESS (No. Street, City, County, State, ZIP Code)										
NAME AND ADDRESS OF LAST EMPLOYER (Include County)										
My Federal Tax Year Started:    /    /    and Ended:    /    /										
<b>A. APPLICANT REQUEST</b>										
I hereby apply for DISASTER UNEMPLOYMENT ASSISTANCE (DUA). My unemployment was a result of this disaster as follows: (Explain in Complete Detail)										
IF YOU WERE SELF-EMPLOYED, YOU MUST ALSO COMPLETE FORM ETA H1A, SUPPLEMENT TO APPLICATION FOR DUASELF-EMPLOYED INDIVIDUALS										
<b>B. RETROACTIVE FILING</b>										
<b>1. LIST BELOW ALL WEEKS FOLLOWING THE DATE OF THE DISASTER THAT YOU WERE TOTALLY OR PARTIALLY UNEMPLOYED DUE TO THE DISASTER AND FOR WHICH YOU ARE CLAIMING DUA. REPORT GROSS EARNINGS FROM EMPLOYMENT AND NET EARNINGS FROM SELF-EMPLOYMENT</b>										
WEEK ENDING	HOURS WORKED	EARNINGS	WEEK ENDING	HOURS WORKED	EARNINGS	WEEK ENDING	HOURS WORKED	EARNINGS		
		\$			\$			\$		
		\$			\$			\$		
		\$			\$			\$		
		\$			\$			\$		
		\$			\$			\$		
		\$			\$			\$		
<b>FOR THE WEEKS CLAIMED ABOVE, ANSWER THE FOLLOWING QUESTIONS BY CHECKING THE APPROPRIATE BOX(ES). IF YOUR ANSWER TO QUESTIONS 2a OR 2b IS "YES", COMPLETE THE INFORMATION REQUESTED IN THE SPACE TO THE RIGHT OF THE QUESTION</b>										
2. a. Did you apply for or receive, or would you be eligible to receive if you had applied for: (1) Unemployment Compensation under any State or Federal Law? (2) Any amounts for loss of wages due to illness or disability? (3) Any type of private income protection insurance? (4) Any amount as a supplemental Unemployment benefit (SUB)? b. Were any amounts payable to you from any retirement, pension or annuity under a public or private plan or system (only if applicable under State UI law)?					<b>YES</b>	<b>NO</b>	TYPE OF EACH PAYMENT AMT.	PERIOD COVERED		
								FROM:	TO:	
3. Were you able and available for work during each of the weeks claimed above? 4. Did you accept all work offered during each of the weeks claimed above? 5. Were you self-employed full-time prior to the disaster date? 6. Were you employed in a family business prior to the disaster date? 7. Were you employed part-time prior to the disaster date? 8. How many hours per week were you employed part time during the week? How many hours per week does an individual work per week if they consider themselves employed full-time in your occupation?										
FOR OFFICE USE										
Percentage of full-time work.....%                      FTWW..... (Check if applicable).....										

<b>C. APPLICANT EMPLOYMENT</b>				
<small>In order to compute the amount of my weekly entitlement to Disaster Unemployment Assistance, I certify that....I....my deceased spouse had the following employment, earnings of \$50.00 or more during the weeks indicated and earnings during the calendar quarters listed below (Report gross earnings from employment, net earnings from self-employment)</small>				
CALENDAR QUARTER ENDING DATE	WEEKS EARNED \$50 OR MORE	NAME AND ADDRESS OF EMPLOYERS:	EARNINGS	FOR OFFICE USE DOCUMENTATION OR OTHER PROOF OF EARNINGS
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
TOTAL WAGES		TOTAL BASE YEAR EARNINGS	\$	
Enter the deceased spouse's first, middle, and last name.				
Enter the deceased spouse's Social Security Account Number.				
<b>D. APPLICANT CERTIFICATION</b>				
I CERTIFY that the information I have given on this form is correct, and that I have supplied the information voluntarily, in order to obtain DISASTER UNEMPLOYMENT ASSISTANCE. I know that Federal funds are provided and that penalties are prescribed by law for willful misrepresentation or concealment of material facts in order to obtain assistance payments to which I am not entitled to receive under the Act				
I HAVE BEEN FURNISHED THE PAMPHLET DUA-5, DISASTER UNEMPLOYMENT ASSISTANCE, which contains a statement required by FEDERAL PRIVACY ACT OF 1974 for the use of my Social Security Account Number on forms listed in the DISASTER UNEMPLOYMENT ASSISTANCE program.				
SIGNATURE OF APPLICANT			DATE (Month, Day, Year)	
SIGNATURE OF LABOR AND INDUSTRY REPRESENTATIVE			DATE (Month, Day, Year)	
<b>FOR OFFICE USE</b>				

(PENNSYLVANIA) SUPPLEMENT TO APPLICATION FOR DUA SELF EMPLOYED INDIVIDUALS					
APPLICANT'S NAME (Last, First, Middle)		DISASTER NO. FEMA.....DR	LOCAL OFFICE NO.	SOC. SECURITY NO.	
BUSINESS NAME AND ADDRESS (No. Street, City, County, State & ZIP Code)		TYPE OF SELF-EMPLOYMENT (Check appropriate boxes)			
		ENGAGED IN:			
		..... Farming	..... Business	.....Profession	
		AS A:			
A. FARMING ACTIVITY (if applicable)		SIZE OF FARM (in acres)			
In columns below, list all farm products raised and held primarily for sale and farm income.					
CROPS		LIVESTOCK		OTHER(Specify)	
Kind	Acres	Kind	Quantity	Kind	Quantity
<b>B. SELF-EMPLOYMENT INFORMATION (Answer all questions in this part)</b>					
1. Describe the nature of your self employment; indicate how long you have been performing it. 2. Did this self-employment require any part of your time in the performance of services? If "NO", explain. 3. Were you performing any services in connection with this self-employment at the time of the disaster? ? If "NO", explain why not. 4. Did the disaster prevent you from performing all services in connection with your self-employment? If "NO", identify services being performed. 5. Since becoming unemployed, have you been performing or able to perform any services in restoring or improving the value or profit-making capability of your self-employment? If "YES", explain. If "YES", identify services being performed. 6. Were you self employed part time prior to the disaster date? 7. How many hours per week were you self-employed part-time during the week? 8. How many hours do individuals work per week if they consider themselves employed full-time in your occupation? 9. At the time of the disaster, was this self-employment your primary source of earned income? If "NO", explain. 10. Do you have any occupation other than this self-employment? If "Yes", what is that occupation? Describe the effect the disaster has had on this occupation.				Yes	No
<b>C. FAMILY BUSINESS INFORMATION</b>					
1. Were you employed in a family business prior to the disaster date? 2. How many adults were employed in the family business prior to the disaster date? 3. How many minors (not adults) were employed in the family business prior to the disaster date? 4. Were you a minor employed in a family business prior to the disaster date? Indicate annual income received \$.....				Yes	No
ETA 81A	REV 1-96	COMMONWEALTH OF PENNSYLVANIA	DEPARTMENT OF LABOR AND INDUSTRY	EMPLOYMENT SECURITY	

**DISASTER UNEMPLOYMENT ASSISTANCE (DUA)  
DUA CLAIM CONFIRMATION LETTER**

**Date:** \_\_\_\_\_ **Social Security Number** \_\_\_\_\_

Claimant  
Name and Address

Scranton UC Service Center  
P.O. Box 691  
Scranton, PA 18101  
1-888-234-5678

Dear Applicant:

This will confirm that on \_\_\_\_\_ you called the Scranton Unemployment Compensation Service Center (UCSC) and applied for a determination of entitlement under the Disaster Unemployment Assistance (DUA) Program. Our Department is currently processing your DUA application. After it is processed, you will be sent a determination to tell you if you qualify under this Federal program. NOTE: If you do not receive this information within the next two (2) weeks, call the Scranton UCSC at the telephone numbers listed above.

Enclosed with this letter is the Disaster Unemployment Assistance pamphlet (DUA-5), which explains your rights and responsibilities when filing for benefits under the Federal DUA Program. Read this pamphlet carefully. If you understand the information contained in this pamphlet, detach the DUA-5 Pamphlet Certification from Page 21 of the pamphlet; complete, sign and date the certification; and mail it immediately to the Scranton UCSC in the enclosed envelope. If you have any questions regarding the information contained in the pamphlet, telephone the Scranton UCSC before signing the certification.

If you qualify, your weekly DUA benefits may be payable to you only after you have exhausted all of your entitlement to regular or extended State or Federal unemployment compensation (UC) benefits. You will receive instructions on how to file for these benefits. Additionally, to help you return to work, you may report to your nearest Pennsylvania Job Center to receive assistance in conducting your work search and in obtaining suitable reemployment as quickly as possible.

**IMPORTANT: IF YOU STARTED YOUR DUA CLAIM BASED ONLY ON YOUR CERTIFICATION THAT YOU HAD EARNINGS IN YOUR MOST RECENT FEDERAL TAX YEAR, WITHIN 21 CALENDAR DAYS AFTER THE DATE YOU FILED FOR DUA, YOU MUST MAIL DOCUMENTS TO THE SCRANTON UCSC THAT PROVIDE PROOF OF ALL YOUR EMPLOYMENT/SELF-EMPLOYMENT OR WAGES EARNED IN THAT PERIOD. FAILURE TO DO THIS MAY AFFECT YOUR ELIGIBILITY TO RECEIVE DUA.**

DUA 7-01A

**DISASTER UNEMPLOYMENT ASSISTANCE (DUA)  
INITIAL DUA CLAIM INFORMATION**

**Date:** \_\_\_\_\_ **Social Security Number** \_\_\_\_\_

Claimant  
Name and Address

Scranton UC Service Center  
P.O. Box 691  
Scranton, PA 18101  
1-888-234-5678

Dear Applicant:

You recently telephoned the Scranton Unemployment Compensation Service Center (UCSC) and applied for a determination of your entitlement to Federal Disaster Unemployment Assistance (DUA).

Your application has been processed based on your application, the following items are enclosed with this letter for your information or action:

1. FORM ETA 82, NOTICE OF DETERMINATION OF ENTITLEMENT

This is your determination regarding your eligibility to apply for the Federal benefits under the DUA program. If the Form ETA 82 indicates that you do not qualify for DUA at this time, the reason(s) for your ineligibility and your appeal rights are explained on this form.

2. ADDITIONAL FORMS YOU MUST COMPLETE AND RETURN:

Please complete the following form(s) and return by mail to the Scranton UCSC in the enclosed envelope within seven (7) calendar days.

- o Affirmation of Self-Employment (DUA-12)
- o Affirmation of Employment (DUA-13)
- o Affidavit of Minor Family Member's Income (DUA-14)
- o Affidavit of Scheduled Employment (DUA-15)
- o Initial Return to Self-Employment Plan (DUA-16)
- o Progress of Efforts to Return to Self-Employment (DUA-17)

IF YOU HAVE ANY QUESTIONS:

Telephone the Scranton UCSC if you have any questions regarding any information provided to you in this letter.

**IMPORTANT: IF YOU ESTABLISHED YOUR DUA CLAIM BASED ONLY ON YOUR CERTIFICATION THAT YOU HAD EARNINGS IN YOUR MOST RECENT FEDERAL TAX YEAR, WITHIN 21 CALENDAR DAYS AFTER THE DATE YOU FILED FOR DUA, YOU MUST MAIL DOCUMENTS TO THE SCRANTON UCSC THAT PROVIDE PROOF OF ALL YOUR EMPLOYMENT/SELF-EMPLOYMENT OR WAGES EARNED IN THAT PERIOD. FAILURE TO DO THIS MAY AFFECT YOUR ELIGIBILITY TO RECEIVE DUA.**

KEEP THIS LETTER FOR FUTURE REFERENCE!



**AFFIRMATION OF SELF-EMPLOYMENT**

Disaster Unemployment Assistance (DUA)

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
BUREAU OF UC BENEFITS AND ALLOWANCES

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Social Security Number \_\_\_\_\_, hereby personally affirm that I was **SELF-EMPLOYED** in the county stated above on \_\_\_\_\_.

My **Federal Income Tax** Year that ended prior to \_\_\_\_\_, the date that the Federally declared disaster occurred, **STARTED** on \_\_\_\_\_, and **ENDED** on \_\_\_\_\_.

**SELF-EMPLOYMENT INCOME**

FIRST QUARTER NET INCOME \$ _____	SECOND QUARTER NET INCOME \$ _____	THIRD QUARTER NET INCOME \$ _____	FOURTH QUARTER NET INCOME \$ _____
---	--	---	--

During my Federal Tax Year above, I worked and earned \$ 50.00 or more in NET INCOME in Self-Employment during \_\_\_\_\_ weeks.  
(number)

To support my claim of **SELF-EMPLOYMENT**, I offer the following statement:

(Please include in your statement the names and address of your business; proof of self-employment, and any proof of net income you are providing today and the amount of that income.)

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(I was not)(I was also) EMPLOYED as a WORKER during my Federal Tax Year

**EMPLOYMENT INCOME**

FIRST QUARTER NET INCOME \$ _____	SECOND QUARTER NET INCOME \$ _____	THIRD QUARTER NET INCOME \$ _____	FOURTH QUARTER NET INCOME \$ _____
---	--	---	--

During my Federal Tax Year above, I worked and earned \$50.00 or more in gross income from employment in \_\_\_\_\_ weeks.  
(number)

To support my claim of additional EMPLOYMENT, I offer the following statement:

(Please include in your statement any proof income you are providing today and the amount of that income)

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I further state that I understand that the Pennsylvania Unemployment Compensation (UC) Law, Disaster Unemployment Assistance (DUA) Law and the DUA Regulations provide penalties for knowingly making false statements for the purpose of obtaining UC and/or DUA benefits. I, therefore, declare that the statements I have made in connection with this claim are true and correct to the best of my knowledge and belief.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**NOTE:** YOU WILL HAVE YOUR DUA WEEKLY BENEFIT AMOUNT (WBA) DETERMINED BASED ON THE WAGE INFORMATION YOU HAVE SUBMITTED AND YOUR SWORN STATEMENT OF EARNINGS. IF YOU DO NOT PROVIDE THE REQUIRED WAGE DOCUMENTATION AS REQUESTED WITHIN 21 CALENDAR DAYS OF YOUR APPLICATION FOR BENEFITS, \_\_\_\_\_, YOUR DUA FINANCIAL DETERMINATION WILL BE RECALCULATED BASED ON THE PROOF OF INCOME INFORMATION YOU HAVE PROVIDED OR THAT IS PART OF THE DEPARTMENT'S WAGE RECORDS. YOU MAY HAVE YOUR DUA WBA REDETERMINED UPON SUBMITTAL OF ACCEPTABLE DOCUMENTATION PRIOR TO THE END OF THE DISASTER ASSISTANCE PERIOD.

The documentation you provide must substantiate that the credit weeks, wages you earned or were paid during the base period to you or the deceased head of your household, would be sufficient to compute a DUA WBA higher than the determined amount. If you are claiming DUA benefits based on self-employment, you must submit documentation that substantiates that you were self-employed, and that the credit weeks, net income from self-employment earned or received during the base period by you or the deceased head of household, would be sufficient to compute a DUA WBA higher than the determined amount. This provision permits you up to 26 weeks from \_\_\_\_\_, the disaster declaration date, to submit a copy of your Federal tax return filed for the most recent tax year. Any higher weekly amount determined will be applied to all weeks that you filed for which you were eligible for the payment of DUA. If you intend to submit the required wage information and you continued to be unemployed as a direct result of the flood disaster, continue to submit your claim forms for DUA benefits.

**AFFIDAVIT OF SCHEDULED EMPLOYMENT**  
Disaster Unemployment Assistance (DUA)

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
BUREAU OF UC BENEFITS AND ALLOWANCES

APPLICANT'S INSTRUCTIONS:

Complete Section A concerning employment which you are scheduled to begin, but are now unable to do so as a direct result of the disaster. Then take this form to the employer that you listed in Section A and have the employer complete Section B. Return the completed form to the Department within 21 calendar days.

**A. APPLICANT'S CERTIFICATION**

Name \_\_\_\_\_  
Occupation \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

In order to qualify for Disaster Unemployment Assistance, I certify that I had a contract to begin employment with the employer indicated below but was not employed due to the disaster.

Name of Employer \_\_\_\_\_  
Address \_\_\_\_\_  
Date Employment Would Have Begun \_\_\_\_\_

I know that Federal funds are provided and that penalties are prescribed by Law for willful misrepresentation or concealment of material facts in order to obtain Disaster Unemployment Assistance payments to which I am not entitled to receive under the Act.

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

**B. EMPLOYER'S CERTIFICATION**

I certify that the individual named above had a contract to begin employment for me on

DATE \_\_\_\_\_ as a \_\_\_\_\_ at a weekly/hourly rate of \$ \_\_\_\_\_ and work

OCCUPATION \_\_\_\_\_  
\_\_\_\_\_ hours per day. I further certify that this contract was not fulfilled as a direct result of the disaster.

Employer Name \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_ State UC Acct. No. \_\_\_\_\_

I understand that Federal funds are provided and that penalties are prescribed by Law for willful misrepresentation or concealment of material facts in order to assist others in obtaining Disaster Unemployment Assistance payments to which they are not entitled to receive under this Act.

Employer's Signature \_\_\_\_\_ Date \_\_\_\_\_

Note: This form must be completed within 21 calendar days from the date you filed your claim. Failure to do so can result in a reduction of your DUA weekly benefit amount and an overpayment, or you may be disqualified from receiving Disaster Unemployment Assistance benefits. However, documentation submitted with a request for reconsideration anytime during the disaster assistance eligibility period may be accepted. This form must be completed for any minor (under age 18) not working at the time of the disaster, but scheduled to work.

DUA-1S 7-98

INITIAL RETURN TO SELF-EMPLOYMENT PLAN  
Disaster Unemployment Assistance (DUA)

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
BUREAU OF UC BENEFITS AND ALLOWANCES

Describe the business activity that you were involved in before the disaster. For example, "I operated a 50-cow dairy farm and sold milk to XYZ Dairy. The barn and milking equipment were destroyed by a tornado" Or, "I operate ABC Home Improvements. The home I was remodeling was destroyed by the flooding."

Explanation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What steps have you taken since the disaster was declared to return to a pre-disaster status in your business? Explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What additional steps must be taken before you will be able to return to a level of pre-disaster business activity? Explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you interested in obtaining employment through the Job Service? \_\_\_\_ Yes \_\_\_\_ No

Based on the information you provided above, when do you think you will be able to work a pre-disaster number of hours in your business? \_\_\_\_\_

When do you think you will stop filing for DUA benefits? \_\_\_\_\_.

I, \_\_\_\_\_, Social Security Number \_\_\_\_\_, on this day, \_\_\_\_\_, declare that the statements I have made in connection with my claim for DUA benefits are true and correct to the best of my knowledge and belief. I further understand that the Pennsylvania Unemployment Compensation (UC) Law, Disaster Unemployment Assistance (DUA) Law and the DUA Regulations provide penalties for knowingly making false statements for the purpose of obtaining UC and/or DUA benefits.

Signature \_\_\_\_\_ Date \_\_\_\_\_

(If you need additional space for any explanations, please use the back of this form.)

**PROGRESS OF EFFORTS TO RETURN TO SELF-EMPLOYMENT**

Disaster Unemployment Assistance (DUA)

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY BUREAU OF UC BENEFITS AND ALLOWANCES

What steps have you taken since the disaster was declared to return to a pre-disaster status in your business?

Explain: \_\_\_\_\_

What additional steps must be taken before you will be able to return to a level of pre-disaster business activity? Explain:

Are you interested in obtaining employment through the Job Service? \_\_\_\_\_ Yes \_\_\_ No

Based on the information you provided above, when do you think you will be able to work a pre-disaster

number of hours in your business? \_\_\_\_\_

When do you think you will stop filing for DUA benefits? \_\_\_ \_\_\_\_\_

I, \_\_\_\_\_, Social Security Number

\_\_\_\_\_, on this day,

\_\_\_\_\_, declare that the statements I have made in connection with my claim for DUA benefits are true and correct to the best of my knowledge and belief. I further understand that the Pennsylvania Unemployment Compensation (UC) Law, Disaster Unemployment Assistance (DUA) Law and the DUA Regulations provide penalties for knowingly making false statements for the purpose of obtaining UC and/or DUA benefits.

Signature \_\_\_\_\_

Date

(If you need additional space for any explanations, please use the back of this form.)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LAROR AND INDUSTRY EMPLOYMENT SECURITY HARRISBURG, PA 17121

AFFIDAVIT OF MINOR FAMILY MEMBER'S INCOME

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, hereby personally affirm that I am an adult member of the family-owned business in which worked. I also affirm that he/she is currently unemployed as a direct result of the disaster that occurred on (DATE)\_\_\_\_\_

To support the claim I offer the following statement:

(Name or Minor) \_\_\_\_\_, (Social Security Number)\_\_\_\_\_, received \$\_\_\_\_\_ as an allowance, hourly wage or percentage of the proceeds of the business \_\_\_\_\_ a family operated business.

He/she worked during the proceeding tax year as follows:

\_\_\_ QTR \_\_\_ WKS
\_\_\_ QTR \_\_\_ WKS
\_\_\_ QTR \_\_\_ WKS
\_\_\_ QTR \_\_\_ WKS

WAGES: \$\_\_\_\_\_ \$\_\_\_\_\_ \$\_\_\_\_\_ \$\_\_\_\_\_

Explain income:

I understand that Title 20, CFR. Section 625.9(a)(2), Disaster Unemployment Assistance (DUA), requires that an individual's eligibility for DUA shall be determined, where a reliable record of employment, self-employment and wages is not obtainable, on the basis of an affidavit submitted to the State Agency by the individual.

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Affiant's Signature)

\_\_\_\_\_  
Notary Public for the Commonwealth of Pennsylvania

\_\_\_\_\_  
(Affiant's Security Number)

OR
Notary Public for the State of: \_\_\_\_\_

\_\_\_\_\_  
Address

My Commission Expires:

OR

\_\_\_\_\_  
(State Agency Representatives Signature)

(PENNSYLVANIA) NOTICE OF DETERMINATION OF ENTITLEMENT DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT OF 1988 (TITLE I, P.L. 100-707)	OFFICE STAMP  FAX NO.
SOCIAL SECURITY ACCOUNT NUMBER	Disaster Number FEMA - DR
	Disaster Date
WORKER'S NAME AND ADDRESS	Disaster Declaration Date
	Disaster Announcement Date

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

You reside in \_\_\_\_\_ were employed or engaged in self-employment in \_\_\_\_\_ were to begin employment or self-employment in or \_\_\_\_\_ travel to your place of work through \_\_\_\_\_ County.  
 You filed an initial application for Disaster Unemployment Assistance (DUA) on \_\_\_\_\_ and claimed benefits for the week(s) ending \_\_\_\_\_).

You were employed by \_\_\_\_\_ and ceased employment on \_\_\_\_\_.

You were engaged in self-employment activity which ceased on \_\_\_\_\_.

You were to begin employment self-employment on \_\_\_\_\_

You are eligible for regular Unemployment Compensation (UC) benefits or another UC program covered under State or Federal Law,

with an application for benefits (AB) date of \_\_\_\_\_. (Sec. 625.4(i))

You are eligible for waiting week period credit under another UC program. (Sec. 625.4(i)).

Your initial DUA application was not filed within the DUA Application Period of \_\_\_\_\_ to \_\_\_\_\_, and you have not established good cause for filing after this application period. (Sec. 625.8(a))

As required under Sec. 625.4(c) of the DUA Regulations, you do not qualify as an "unemployed worker" or "unemployed self-employed individual" because you are found not to have been unemployed, or the major disaster did not directly cause your ....

Unemployment. (Sec. 625.5(a)(1))

Inability to reach your place of employment. (Sec. 625.5(a)H2H

Inability to start or reach a new job. (Sec. 625.5(a)(2))

Becoming the breadwinner or major support of a household because the head of the household has died as a result of the disaster. (Sec. 625.5(a)(4))

Becoming unemployed as the result of an injury. (Sec. 625.5(a5))

Inability to perform services as a self-employed individual. (Sec. 625.5(b)(1))

Inability to reach the place where you perform services as a self-employed individual. (Sec. 625.5(b)(2))

Inability to Commence services as a self-employed Individual. (Sec. 625.5(b)(3))

Inability to perform services as a self-employed individual. (Sec. 625.5(b)(4))

You are claiming a week of unemployment that begins outside of the DUA period of \_\_\_\_\_ to \_\_\_\_\_. (Sec. 625.4(a))

You are receiving income or compensation other than DUA, in the amount of \_\_\_\_\_, from \_\_\_\_\_, which must be deducted from the amount of DUA payable to you. (Sec. 625.13(a)(1) through (6))

You are not able and available for work and your inability to work or engage in self-employment is not because of an injury caused as a direct result of the major disaster. (Sec. 625.4(g))

You became reemployed in a suitable position beginning on \_\_\_\_\_. (Sec. 625.13(b)(1))

You refused without good cause to apply for or to accept suitable reemployment. (Sec. 625.4(h); 625.13(b)(2))

Other;

**DETERMINATION:**

In accordance with Section(s): 625.4 625.5 625.8 625.13 of the DUA Regulations, you are ineligible for DUA with respect to the following:

All DUA applied for under this disaster declaration.

DUA claim week(s) ending \_\_\_\_\_.

**APPEAL RIGHTS:**

**APPEAL RIGHTS:**

If you disagree with this determination, you may appeal. If you wish to file an appeal, you must do so on or before \_\_\_\_\_. See reverse side for complete appeal instructions.

SIGNATURE OF OFFICE REPRESENTATIVE \_\_\_\_\_

Mailed on: \_\_\_\_\_

Delivered on: \_\_\_\_\_

DATE \_\_\_\_\_

SEE REVERSE SIDE FOR DUA REGULATION PROVISIONS

## EAL INFORMATION

As provided by the Code of Federal Regulations at 625.10, end section 501 (e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless an appeal is timely filed. If you disagree with this determination, you have the right to appeal. If you wish to file an appeal, you must do so within 60 days from the date this determination was mailed. If the sixtieth day of the appeal period falls on a day on which the UC service Center or Job Center is closed (Saturday, Sunday, or State Holiday, the appeal period is extended to the next working day. The last date to file an appeal is shown near the bottom on the face of this form.

You may file an appeal by mail or by FAX, by completing section 1 of the enclosed Petition for Appeal form and returning the form to the office at the address/FAX number shown on this determination, or by sending a letter of appeal to the office at the address/FAX number shown on this determination. Regardless of the method you choose, your request for appeal must include a statement specifically requesting an appeal of this determination, the reason you disagree with the determination, your Social Security Number, and your signature. If you file your appeal by mail, your appeal must be addressed to the office that issued the determination, and postmarked by the U.S. Postal Service on or before the last day to appeal indicated on the face of this form. If you file your appeal by FAX, your faxed appeal must be received by the office by the close of business on the last day to appeal. You may appeal in-person at the nearest Job Center/Team Pennsylvania CareerLink during normal business hours on or before the last day to appeal. Appeals cannot be filed in-person at UC Service Centers.

If you file an appeal, you must continue to file your claims as directed by the UC service Center or Job Center.

## FEDERAL REGULATIONS OF THE DISASTER UNEMPLOYMENT ASSISTANCE PROGRAM

**§ 625.2 Definitions**

"Compensation" means any State or Federal assistance or allowance as defined in the Internal Revenue Code of 1986. Section 85. payable to an individual for a week of unemployment, unless otherwise excluded by an IRS ruling or a Federal and/or State provision.

**§ 625.4 Eligibility requirements for Disaster Unemployment Assistance.**

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:

- (a) That week begins during a Disaster Assistance Period;
- (b) The applicable State for the individual has entered into an Agreement which is in effect with respect to that week;
- (c) The individual is an unemployed worker or an unemployed self-employed individual;
- (d) The individual's unemployment with respect to that week is caused by a major disaster, as provided in §625.5;
- (e) The individual has filed a timely initial application for DUA and, as appropriate, a timely application for a payment of DUA with respect to that week;
- (f) That week is a week of unemployment for the individual;
- (g) The individual is able to work and available for work within the meaning of the applicable State law: *Provided*, That an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment;
- (h) The individual has not refused a bona fide offer of employment in a suitable position, or refused without good cause to resume or commence suitable self-employment, if the employment or self-employment could have been undertaken in that week or in any prior week in the Disaster Assistance Period; and
- (i) The individual is not eligible for compensation (as defined in §625.2(d)) or for waiting period credit for such week under any other Federal or State law, except that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit. An individual shall be considered ineligible for compensation or waiting period credit (and thus potentially eligible for DUA) if the individual is under a disqualification for a cause that occurred prior to the individual's unemployment due to the disaster, or for any other reason is ineligible for compensation or waiting period credit as a direct result of the major disaster.

**§ 625.5 Unemployment caused by a major disaster.**

(a) *Unemployed worker.* The unemployment of an unemployed worker is caused by a major disaster if—

- (1) The individual has a "week of unemployment" as defined in §625.2(w)(1) following the "date the major disaster began" as defined in §625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) The individual is unable to reach the place of employment as a direct result of the major disaster; or
- (3) The individual was to commence employment and does not have a job or is unable to reach the job as a direct result of the major disaster; or
- (4) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster; or
- (5) The individual cannot work because of an injury caused as a direct result of the major disaster.

(b) *Unemployed self-employed individual.* The unemployment of an unemployed self-employed individual is caused by a major disaster if—

- (1) The individual has a "week of unemployment" as defined in §625.2(w)(2) following the "date the major disaster began" as defined in §625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or
- (3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or
- (4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

**§ 625.13 Restrictions on entitlement; disqualification.**

(a) *Income reductions.* The amount of DUA payable to an individual for a week of unemployment, as computed pursuant to §625.6, shall be reduced by the amount of any of the following that an individual has received for the week or would receive for the week if the individual filed a claim or application therefore and took all procedural steps necessary under the appropriate law, contract, or policy to receive such payment:

- (1) Any benefits or insurance proceed from any source not defined as "compensation" under §625.2(d) for loss of wages due to illness or disability;
  - (2) A supplemental unemployment benefit pursuant to a collective bargaining agreement.
  - (3) Private income protection insurance;
  - (4) Any workers' compensation by virtue of the death of the head of the household as the result of the major disaster in the major disaster area, prorated by weeks, if the individual has become the head of the household and is seeking suitable work because the head of the household died as the result of the major disaster in the major disaster area; and
  - (5) The prorated amount of a retirement pension or annuity under a public or private retirement plan or system, prorated, where necessary, by weeks, but only if, and to the extent that, such amount would be deducted from regular compensation payable under the applicable State law.
  - (6) The prorated amount of primary benefits under title II of the Social Security Act, but only to the extent that such benefits would be deducted from regular compensation if payable to the individual under the applicable State law.
- (b) *Disqualification.* (1) An individual shall not be entitled to DUA for any week after the week in which the individual is reemployed in a suitable position.
- (2) An individual who refuses without good cause to accept a bona fide offer of reemployment in a position suitable to the individual, or to investigate or accept a referral to a position which is suitable to and available to the individual, shall not be entitled to DUA with respect to the week in which such refusal occurs or in any subsequent week in the Disaster Assistance Period. For the purposes of this paragraph, a position shall not be deemed to be suitable for an individual if the circumstances present any unusual risk to the health, safety, or morals of the individual, if it is impracticable for the individual to accept the position, or if acceptance for the position would, as to the individual, be inconsistent with any labor standard in section 3304(a)(5) of the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(5), or the comparable provisions of the applicable State law



**INFORMATION ON:** Verification of Citizenship, Qualified Alien Status and Eligibility for Disaster Unemployment Assistance (DUA) applicable to all disasters declared on or after February 28, 1998.

**DESCRIPTION:** When Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, Title IV of the Act requires that federal public benefits only be provided to United States citizens, non-citizen nationals, and qualified aliens. Under the Act, specific sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, are considered federal public benefits.

**GUIDANCE:** The following guidance is provided to comply with the requirements of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the “Act”), P.L. 104-193, as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA), P.L. 104-208, which amended the Immigration and Nationality Act (INA).

The Act provides that, with certain exceptions, only United States citizens, United States noncitizen nationals and “qualified aliens” (and sometimes only particular categories of qualified aliens) are eligible for federal, state, and local public benefits. Additionally, the Act requires the Attorney General, by February of 1998, to promulgate final regulations requiring verification that an applicant is a qualified alien eligible to receive federal public benefits under the Act.

The DOL (and States acting as agents for the Department in administering Federal benefit programs) must adhere to new standards with this Act. With this Act, a State is **not** permitted to provide the DUA program, a federal public benefit, to persons who are not U.S. citizens, noncitizen nationals, or qualified aliens. A **federal public benefit** is defined as:

Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; or

Any retirement, welfare, health disability, public or assisted housing, post-secondary education, food assistance, **unemployment benefits**, or any similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

The Act’s verification requirement **does apply**, as these programs meet the definition of a federal public benefit, to the following programs of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended:

Section 408, Temporary Housing Assistance

**Section 410, Unemployment Assistance**

Section 411, Individual and Family Grant Programs

Section 412, Food Coupons and Distribution

Title IV of the Act prohibits the Department (and agent State agencies) from providing a federal public benefit (DUA) to persons who are not U.S. citizens, U.S. non-citizen nationals, or qualified aliens. Therefore, all individuals indicating they are not U.S. citizens on an application for DUA must provide an identity document indicating they are either a U.S. non-citizen national or qualified alien. All aliens are subject to the verification requirements of the Systematic Alien Verification for Entitlements (SAVE) system that State agencies have with the Immigration and Naturalization Service (INS). Presentation of appropriate documentation, as discussed below, to indicate that an individual is a U.S. non-citizen national or qualified alien (pending verification) is sufficient for the purpose of providing DUA.

The following are definitions and documentary evidence for these categories.

### **UNITED STATES CITIZEN OR NON-CITIZEN NATIONAL DEFINITION**

A person (other than the child of a foreign diplomat) born in one of the 50 States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;

A person born outside of the United States to at least one U.S. citizen parent (sometimes referred to as a “derivative citizen”);

A naturalized U.S. citizen; or

As a general matter, a United States non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain’s Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

### **UNITED STATES CITIZEN OR NON-CITIZEN NATIONAL**

#### **DOCUMENTARY EVIDENCE OF STATUS**

NOTE: The document(s) listed below will, when combined with satisfactory proof of identity, (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant is a U.S. citizen or non-citizen national for the purposes of the Act, as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA).

#### **PRIMARY EVIDENCE:**

A birth certificate showing birth in one of the 50 States the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain’s Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in such a jurisdiction. NOTE: If documents show that the individual was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen)

United States passport (except limited passports, which are issued for periods of less than five years);

Report of birth abroad of a U.S. citizen (FS-240) (issued by the Department of State to U.S. citizens);

Certificate of birth (FS-545) (issued by a Foreign Service post) or a Certification of Report of Birth (DS-1350) (issued by the Department of State), copies of which are available from the Department of State);

Certificate of Naturalization (N-550 or N-570) (issued by the Immigration and Naturalization Service (INS) through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N-570 is a replacement certificate issued when the N-550 has been lost or mutilated or the individual's name has changed);

Certificate of Citizenship (N-560 or N-561) (issued by the INS to individuals who derive U.S. citizenship through a parent; the N-561 is a replacement certificate issued when the N-560 has been lost or mutilated or the individual's name has changed);

United States Citizen Identification Card (I-197) (issued by the INS until April 7, 1983 to U.S. citizens living near the Canadian border or Mexican border who need it for frequent border crossings) (formerly Form I-179, last issued in February of 1974);

Northern Mariana Identification Card (issued by the INS to collectively naturalized citizens of the U.S. who was born in the Northern Mariana Islands before November 3, 1986);

Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U.S. who derives citizenship through a parent but does not have an FS-240, FS-545 or DS-1350; or

American Indian Card with a classification code "KIC" and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

### **SECONDARY EVIDENCE:**

NOTE: If the applicant cannot present one of the documents previously mentioned under PRIMARY EVIDENCE, the following may be relied upon to establish U.S. citizenship or nationality:

Religious record recorded in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within three months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;

Evidence of civil service employment by the U.S. government before June 1, 1976;

Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);

Census record showing name, U.S. citizenship or U.S. place of birth, and date of birth or age of applicant;

Adoption Finalization Papers showing the child's name and place of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) or, where an adoption is not finalized and the State or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or

Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)).

### **COLLECTIVE NATURALIZATION:**

NOTE: If the applicant cannot present one of the documents listed under PRIMARY or SECONDARY EVIDENCE, the following will establish U.S. citizenship for collectively naturalized individuals.

#### **(PUERTO RICO)**

Evidence of birth in Puerto Rico on or after April 11, 1899, and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or

Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917, and that he or she did not take an oath of allegiance to Spain.

#### **(U.S. VIRGIN ISLANDS)**

Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927;

The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917, and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship;

or

Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932.

#### **(NORTHERN MARIANA ISLANDS) (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI):**

Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time);

Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981, (NMI local time), voter registration prior to January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time); or

Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI) local time).

NOTE: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

**DERIVATIVE CITIZENSHIP:**

NOTE: If the applicant cannot present one of the documents previously mentioned under PRIMARY EVIDENCE, SECONDARY EVIDENCE, or COLLECTIVE NATURALIZATION, the following may be relied upon to determine derivative U.S. citizenship in the following situations:

Applicant born abroad to two U.S. citizen parents: Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the applicant's birth.

Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent: Evidence that one parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth.

Applicant born out of wedlock abroad to a U. S. citizen mother: Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or U.S. possession for a period of one year.

Applicant born in the Canal Zone or the Republic of Panama: A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth; or a birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

**QUALIFIED ALIEN DEFINITION**

- an alien admitted for permanent residence under the Immigration and Nationality Act (INA”);
- an alien granted asylum under § 208 of the INA;
- a refugee admitted to the U.S. under § 207 of the INA;
- an alien paroled into the U.S. under § 212 (d) (5) of the INA for at least one year:
- an alien whose deportation is being withheld under § 243 (h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under § 241 (b) (3) of the INA;

- an alien granted conditional entry pursuant to § 203 (a) (7) of the INA as in effect prior to April 1, 1980;
- an alien who is a Cuban or Haitian entrant as defined in § 501 (e) of the Refugee Education Assistance Act of 1980; or
- an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431 (c) of the Act.

### **QUALIFIED ALIEN DOCUMENTARY EVIDENCE OF STATUS**

NOTE: The document(s) listed below will, when combined with satisfactory proof of identity, (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within one of the categories of qualified alien for the purposes of the Act, as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA).

#### **ALIEN ADMITTED FOR PERMANENT RESIDENCE:**

INS Form I-551 (Alien Registration Receipt Card, commonly known as a Green Card”); or Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.

#### **ASYLEE:**

INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;

INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(5)”;

INS Form I-766 (Employment Authorization Document) annotated “A5”;

Grant letter from the Asylum Office of INS; or

Order of an immigration judge granting asylum.

#### **REFUGEE:**

INS Form I-94 annotated with stamp showing admission under § 207 of the INA;

INS FORM I-688B (Employment Authorization Card) annotated “274a.12(a)(3)”;

INS Form I-766 (Employment Authorization Document) annotated “A3”;

INS Form I-571 (Refugee Travel Document).

#### **ALIEN PAROLED INTO U.S. FOR AT LEAST ONE YEAR:**

INS Form I-94 with stamp showing admission for at least one year under § 212(d)(5) of the INA.

(Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement.)

#### **ALIEN WITH DEPORTATION OR REMOVAL WITHHELD:**

INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(10)”;

INS Form I-766 (Employment Authorization Document) annotated “A10; or

Order from an immigration judge showing deportation withheld under § 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under § 241(b)(3) of the INA.

**ALIEN GRANTED CONDITIONAL ENTRY:**

INS Form I-94 with stamp showing admission under § 203(a)(7) of the INA;

INS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)”;

INS Form I-766 (Employment Authorization Document) annotated “A3.”

**CUBAN/HAITIAN ENTRANT:**

INS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”) with the code CU6, CU7, CH6;

Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7;  
or

INS Form I-94 with stamp showing parole as “Cuban/Haitian Entrant” under Section 212(d)(5) of the INA.

**ALIEN WHO HAS BEEN BATTERED OR SUBJECT TO EXTREME CRUELTY:**

NOTE: Certain categories of aliens who have been subjected to battery or extreme cruelty in the United States by a family member with whom they resided are qualified aliens eligible for federal public benefits under this Act. An alien whose child or an alien child whose parent has been abused is also a qualified alien.

INS guidance, for this category of qualified alien, is very extensive and will be provided on a case by case basis when the alien seeking such federal public benefits identifies his or her documentary evidence of status to be within this category and of this nature.

If an applicant has a disability limiting his or her ability to provide the required evidence of citizenship, nationality, or immigration status (e.g., mental retardation, amnesia, or other cognitive, mental or physical impairment), every effort should be made to assist the applicant to obtain the required evidence.