

**ET HANDBOOK NO. 384
UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS (UCX)**

CHAPTER V - OVERPAYMENTS RECOVERY AND PROSECUTION

1. Prevention and Detection of UCX Overpayments. The State Agency is responsible for taking necessary measures to ensure that UCX benefits are paid only to those individuals who meet all necessary requirements. The State agency should employ the same methods used for State UI claims to prevent and detect possible violations of State and Federal law, specifically 18 U.S.C. 1919. The State agency are required to compare the LCCC inquiry response with respect to the Dates of Service, Entry Date, Separation Date, Pay Grade, Rate or Rank and Date of Birth with the entries on the DD Form 214 to ensure that the DD Form 214 is valid and unaltered. Other items that should receive special attention are those with typing strike-overs and erasures. If the agency's procedure provides for postaudits of State UI claims, the agency will include UCX claims in such postaudits to the same extent as it does for State UI claims.

a. Prevention of Duplicate Claims. The State agency will establish and maintain controls to detect duplicate filing of UCX claims and the concurrent filing of State UI or UCFE and UCX claims under the intrastate program or interstate and combined wage programs when the wages are assigned or transferred to the State, and when the State is acting as an agent State.

2. Overpayment Determinations.

a. Non-Fraud Overpayment Determinations. When UCX benefits are determined to have been improperly paid under conditions that involves no fraud, the State agency will issue an overpayment determination in the same manner and under the same conditions as apply to such payments under the State UI program. Any provisions of State law authorizing waiver of recovery of nonfraud overpayments shall be applicable to UCX. Such determinations are subject to the same appeal and review that the State law provides for other types of determinations.

b. Fraud Overpayment Determinations. An individual who obtains UCX benefits through fraud is subject to the administrative disqualification and penalties apply to such payments under the State UI program. Determinations issued as a result of fraud are subject to the same appeal and review that the State law provides for other types of determinations.

3. Overpayment Recovery. Under the provisions of 5 U.S.C. 8507(a), if it is determined that an individual has been improperly paid UCX benefits as a result of fraud on non-fraud, he/she

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will be required to repay the amount of such overpayment in accordance with State law. Except that, the offset of UCX benefits payable to recover a UCX overpayment which resulted from fraud is limited to the 2-year period immediately following the date of the fraud determination. However, the claimant is liable for repayment of the overpayment balance not recovered by offset. This matter is covered in the Federal UCX regulations (20 CFR Part 614). If State law so provides, a State agency may limit the amount of an individual's WBA that may be offset for any week to reduce the balance of the outstanding non-fraud overpayment.

The State agency must observe the minimum requirements in collecting an overpayment of UCX benefits as described below.

a. Court Ordered Repayment or Other Agreements. In a case involving fraud, if an agreement for repayment has been obtained by the U.S. Attorney or a State attorney, or in a case of court ordered repayment, and the debtor fails to repay as agreed or ordered, the State agency will notify the U.S. Attorney, the State attorney, or the court, as appropriate.

b. Comprehensive Overpayment Collection Procedures and Practices. Except as provided in this Chapter, the State agency should seek to recover all UCX overpayments through a comprehensive, vigorous, and uniformly applied collection program that is at least equal to its efforts to collect State UI overpayments. The program for collecting a UCX overpayment must include all debt collection procedures reasonably available to the State agency, such as (but not limited to):

- (1) Timely and aggressive demands for repayment, embodying adequate description of the overpayment;
- (2) Efforts to locate the debtor by communicating with past employers; by examining wage records, when available; by personal visit to debtor's last known address; by inquiry among his/her former associates and relatives; and by using the Interstate Crossmatch/Claimant Locator.
- (3) Collections by offset when possible according to this Chapter;
- (4) By civil suit, as authorized by State law; and
- (5) When the debtor is adjudicated bankrupt, the timely filing of a proof of claim with the appropriate administrative authority or court.

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c. Limiting Collection Activity Due to Diminishing Returns. The State agency will establish and observe realistic points of diminishing returns beyond which further collection efforts by the State agency are not justified or beyond which collection efforts may be limited. In establishing points of diminishing returns, the State agency will consider estimated or actual recovery rates in relation to:

- (1) Costs of different types of action;
- (2) Size of the debt; and
- (3) The possibility of collection through the State agency's efforts and by other means.

4. Cross-Program and Interstate Overpayment Recovery. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272, Section 12401, amended Sections 303(a)(5) of the Social Security Act (SSA), and Sections 3304(a)(4), and 3306(f), FUTA, and added subsection (g) to Section 303, SSA. These amendments provide for reciprocal offset of benefits payable under State UI law or Federal UCX/UCFE law to recover overpayments under the State or Federal programs. Additionally, it provides for the offset of such benefits to recover benefit overpayments under other States' laws.

The agreements described in "a" and "b" below have been made available to provide framework for the implementation of the provision.

a. Cross-Program Offset Agreement With Secretary of Labor. To offset cross-program between Federal and State funded benefit programs on an intrastate, the State must sign a reciprocal agreement with the Secretary of Labor. To offset cross-program on an interstate basis, both the requesting and recovering State must have signed a reciprocal agreement with the Secretary. The procedures for handling interstate overpayment recoveries, State or Federal, are published in Section IX of ET Handbook No. 392.

b. Interstate Reciprocal Overpayment Recovery Arrangement (IRORA). The IRORA was developed by the Interstate Conference of Employment Security Agencies' (ICESA) Interstate Benefit Committee and approved by ICESA Board of Directors as a cooperative agreement between States to provide for interstate collection of unpaid benefit overpayments in one State by offsetting benefits payable under other States' laws. To offset cross-program on an interstate basis, both the requesting and recovering State must have signed a reciprocal agreement with the Secretary. The

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procedures for handling interstate overpayment recoveries, State or Federal, are published in Section IX of ET Handbook No. 392.

5. Combined Wage Claim (CWC) Overpayment Recovery. Upon request by a transferring State, benefits payable under the CWC arrangement must be withheld to recover an overpayment in a transferring, State unless the law of the paying State specifically prohibits such recovery (20 CFR 616.8(e)). Therefore, if a State agency has transferred wages for use on a CWC claim and the claimant has an outstanding balance on an overpayment in the transferring State, the State should enter the "overpayment indicator" on the TC-IB4 wage transfer response and forward a request for recovery to the paying State. If the paying State refuses to offset the overpayment, the case should be forwarded to the appropriate ETA Regional Office for resolution. Refer to ET Handbook No. 399 for additional information.

6. Write-off of UCX Overpayments--Fraudulent and Nonfraudulent. After following required collection procedure and having reached a point of diminishing returns, a State agency may, after accountability has transferred to the State (as described in Chapter I, Item 15), determine that a debt is uncollectible and remove the amount of the uncollectible overpayment from its accounts in situations as follows:

a. When a debtor has no resources and is arrested for a felony or is permanently incapacitated for work, physically or mentally;

b. When a debtor dies and there is positive evidence showing the debtor left no estate;

c. When a debtor is adjudged bankrupt or was discharged in bankruptcy, and the amount due as listed in the schedule of debts or proof of claim was duly filed in the bankruptcy proceedings, regardless of the amount:

d. When an overpayment amounts to \$25 or less and was on the State agency's records for at least one year; or

e. When an overpayment amounts to more than \$25 and was on the State agency's records for at least three years.

Removal of an overpayment from the accounting records does not cancel the debt to the Federal Government, which remains collectible until paid or otherwise discharged. However, no further active collection efforts are required.

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7. Disposition of Recovered UCX Funds. Any amount recovered by a State agency shall be credited to the FEC Account by reporting such amount on the quarterly ETA 191 as an adjustment, credited to the Federal military agency originally charged.

8. Interest on UCX Overpayments. Federal laws (5 U.S.C. Section 8502(b), 5 U.S.C. Section 8521(b)) require equal treatment of claimants under the UCX program. Under the equal treatment rule, if a State agency imposes on claimants an interest charge on overpayment balances under the regular Federal-State unemployment compensation program, the charge must be imposed on overpayment balances due under the UCX program (20 CFR Section 614.11(f)). Federal law requires no minimum or "Standard" interest rate. Therefore, whatever interest rate applies to regular State unemployment insurance, also applies to UCX program funds. However, under the applicable Federal statutes and regulations, a State is not authorized to retain the interest collected on UCX program overpayments.

An overpayment, under the UCX program, that results from a knowing misrepresentation or failure to disclose material facts, must be repaid. 5 U.S.C. Section 8507(a). Section 8507(b)(1) provides that "(a)n amount repaid" under subsection (a) shall be "deposited in the fund from which payment was made, if the repayment was to a State agency." (Emphasis supplied). See, e.g., 20 CFR Section 614.11(j)(1). The term "an amount repaid" includes both the overpayment principal recovered and any interest charge assessed. Therefore, both the principal and the interest charge must be credited to the FEC Account.

Although authority for assessment of interest is in State law, the imposition of the charge does not entitle the State to assume ownership of the interest collected. Interest on interpleaded or deposited private property funds generally follows this principal and is a protected property right that may not be appropriated by the State without just compensation. Therefore, if the State retains interest on Federal funds, it would amount to an unauthorized appropriation of Federal funds.

9. Records of UCX Overpayment--Fraudulent and Nonfraudulent. Accounting records, specifically identified by program will be kept for UCX overpayments. Among other things, records of UCX overpayments will contain the reason for each overpayment and will show, separately, overpayment resulting from fraud. Records of UCX overpayments will show, in each case, the amount of the overpayment, the action taken by the State agency to collect the overpayment, the results of the State agency's collection activities, the dates and amounts of repayments or amount recov-

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ered by offset, and the current balance, if any. The basis for the State agency'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. The records will be transferred to State agency accountability for disposal, under provisions of State law, 3 years after the date of write-off.

10. Criminal Offense. Under the Federal Criminal Code (18 U.S.C. 1919), a person who makes a false statement of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, to obtain or increase for himself/herself, or for any other person, a UCX payment, may be fined not more than \$1,000 or imprisoned for not more than 1 year, or both.

The statement or representation must have been false and the claimant must have known it was false. It must have been material to his/her claim, and it must have been made for the purpose of obtaining or increasing for himself/herself or someone else a payment under the Federal UCX law (5 U.S.C. Chapter 85). If the case is failure to disclose, the failure must have been of a material fact and the person who failed to disclose such fact must have known that the failure would obtain or increase a benefit for himself/herself or someone else. However, facts which support a determination imposing an administrative disqualification and penalty for fraud may not be sufficient to support a criminal prosecution.

a. Preparation of Case. When a State agency has enough facts for a prima facie case under the Federal Criminal Code (18 U.S.C. 1919, or 5 U.S.C. 8507), it will develop the factual information, such as lists of witnesses and an abstract of the evidence each will present, copies of applications, certificates, statements or affidavits in which false allegations of material facts are made, copies of payrolls, samples of signatures, and any other evidence. The amount of overpayment, if any, and copies of checks, warrants, or cash receipts received by the person, will be shown.

b. Decision on Appropriate Action. Consistent with the ETA/OIG Memorandum of Understanding on this subject and based on the material compiled, 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

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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.

11. Arrangements with the Department of Justice (DOJ) and the Office.

a. Referral to the OIG. The DOJ and the Federal Bureau of Investigation (FBI) have agreed with the DOL that the authority to investigate criminal fraud matters arising from and pertaining to Federal unemployment compensation programs shall be vested in the OIG. (See Memorandum of Understanding (MOU), FBI and OIG (October 14, 1983); DOJ letter from Stephen S. Trott (Assistant Attorney General-Criminal Division) to Francis X. Lilly (Deputy Solicitor of Labor) (February 15, 1984)) Fraudulent claims for UCX will be referred to the appropriate RIGI or the Chief of the Security and Special Investigations Branch (CSSI) if they meet any one or more of the following three criteria:

(1) 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

(2) If the established fraudulent overpayment (regardless of amount) involves the use of a false governmental identification document, such as DD 214/215, to claim entitlement for UCX benefits (violation of 18 USC 1028); or

(3) 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 (i.e., DD 214/215, etc.). If the case involves "other factors", show the specific reason in the transmittal (i.e., the offense is considered as exceptionally flagrant and the penalties of State law are not deemed sufficient or the claimant is no longer residing in the State).

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Referral of these claimant fraud cases will be made by a narrative summary from the State agency to the appropriate RIGI/CSSI on 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 Item 11 above), the type(s) of UC program involved as well as the monetary loss (i.e., UCX - \$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.

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 prior to referral to the appropriate U.S. Attorney for prosecutive action. Those cases referred to but not accepted by the OIG will be returned to the State agency. The RIGI/CSSI will also notify the ETA/RA of such cases where no action will be taken. Upon return of these cases, the State agency should consider appropriate prosecutive action 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 11 above should be changed within a jurisdiction (State/Region) due to the workload, the known attitude of prosecutors, or the quality of State agency obtained prosecutions, the Assistant Inspector General for

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ETA, will authorize revisions to the referral criteria. In general, 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 Director, Unemployment Insurance Service, ETA, through the Office for Regional Management.

b. Records of Cases Referred to the OIG. A record of each case referred to the OIG will be maintained by the State agency, showing the dates and the documents referred. This record 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 UCX overpayment established to the claimant's account and subsequent recoveries, as well as collection efforts (if appropriate), are to be posted to the claimant's record by the State agency.

12. Referral of Cases for Prosecutor 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 criteria for prosecution of cases of fraudulent claiming of State UI benefits.