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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER 22-08

TO: STATE WORKFORCE AGENCIES

FROM: BRENT R. ORRELL /s/
Deputy Assistant Secretary

SUBJECT: Disaster Unemployment Assistance – Questions and Answers

- I. Purpose. To respond to questions from states concerning eligibility determinations related to Disaster Unemployment Assistance (DUA).
- II. References. ETA Handbook No. 356, 2nd Edition, Disaster Unemployment Assistance; DUA Regulations at 20 CFR Part 625; and Unemployment Insurance Program Letter (UIPL) 26-07.
- III. Background. DUA provides temporary income replacement to eligible individuals who are unemployed as a direct result of a major disaster declared by the President of the United States. To qualify for DUA, individuals must first be determined ineligible for unemployment compensation (UC) under any other state or Federal law. State UC agencies administer the DUA program on behalf of the U.S. Department of Labor, acting as agents of the Federal government.

The Department of Homeland Security, Federal Emergency Management Agency (FEMA), provides the funding for DUA benefits and the states' DUA program administrative costs.

- IV. Eligibility Determinations for Receipt of DUA. This advisory includes information concerning DUA eligibility requirements. State UC agencies are responsible for obtaining information and conducting the necessary fact-finding to make eligibility determinations for DUA, including contacting employers and/or others, as necessary. State UC agencies must also provide DUA applicants with information concerning their rights and responsibilities related to DUA. Individuals filing for DUA are required to submit proof of employment and wages and other such information needed to establish their DUA entitlement. The DUA regulations at 20 CFR Part 625 govern eligibility for DUA, but also provide specific instances where state law applies.

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This UIPL is being issued because states have requested guidance in addressing issues that require adjudication. These issues include but are not limited to whether: 1) good cause exists for late filing of a DUA claim; 2) an individual's unemployment is a direct result of a major disaster; 3) an individual provided sufficient proof of employment/wages documentation; 4) an individual is able to work and available for work; and 5) good cause exists for refusal of suitable work. The attachment to this UIPL contains a set of questions and answers addressing the above issues.

- V. Action. State Administrators are requested to provide this guidance to appropriate staff.
- VI. Attachment. Disaster Unemployment Assistance (DUA) – Questions and Answers.

Disaster Unemployment Assistance (DUA) Questions and Answers

A. Determining Good Cause for Late Filing of DUA Claims

The DUA regulations at 20 CFR 625.8(a) require that an initial application for DUA be filed within 30 days from the date the availability of DUA is announced in the state, but permit a limited extension if the applicant had good cause for late filing.

1. **Question:** ETA Handbook No. 356 indicates “good cause” for the late filing of an initial DUA claim may exist even if the same circumstances would not constitute “good cause” under state law for late filing of an unemployment compensation (UC) claim. What circumstances constitute “good cause” for late filing of an initial DUA claim?

Answer: “Good cause” exists for late filing when an individual’s circumstances or the widespread impacts of the disaster are such that it is reasonable to believe that the individual did not know about the availability of DUA or it is otherwise not reasonable to expect a claim to be filed within 30 days. However, under no circumstances will a claim be considered timely when filed after the Disaster Assistance Period (DAP). The DAP is “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.” (See 20 CFR 625.2(f).)

2. **Question:** What are some examples of when a state may determine that good cause exists for late filing of a DUA claim?

Answer: Some examples of good cause include, but are not limited to, when:

- a) the individual was employed in a Federal, state, or locally-funded temporary job designated to assist in clean-up or other activities that enables the community to recover from the effects of the major disaster, that work continued beyond the 30-day filing period, and the DUA claim is filed when the temporary employment terminates;
- b) the individual could not have reasonably known about the availability of DUA because appropriate announcements were not published as a result of a disruption of communication services or were not published in the appropriate language(s);
- c) the state can reasonably confirm that the state or FEMA provided incorrect claim filing information resulting in the late filing of a claim;
- d) the individual, such as a migrant/seasonal farm worker, returned to the disaster area after the 30-day filing deadline intending to start work as arranged prior to the disaster, but the work no longer was available due to the disaster; and
- e) the individual exhausts entitlement to other UC and subsequently files for DUA.

3. Question: What is an example of when good cause does not exist for late filing of a DUA claim?

Answer: An example would be when the appropriate announcement(s) was issued, an individual had the opportunity to know about the availability of DUA, and the only reason given for late filing of a claim is that the individual was unsure whether s/he would be eligible for these benefits.

B. Determining Unemployment as a Direct Result of a Major Disaster

The DUA regulations at 20 CFR 625.4 and 625.5 require that an individual's unemployment must be a direct result of a major disaster to qualify for DUA. In general, an individual's unemployment is a direct result of the major disaster when it 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.

1. Question: What are some examples of when unemployment may be determined to be the direct result of a major disaster?

Answer: Some examples of when an individual is considered unemployed as a direct result of a major disaster include, but are not limited to, when:

- a) the individual's place of employment is located within the disaster area and was damaged or destroyed, or is otherwise unable to operate due to a power outage, or utilities failure caused by the disaster, or because employees are unable to reach the business;
 - b) the individual's place of employment was not damaged due to the disaster and work is available, but the individual is unable to reach his/her place of employment due to the closure or inaccessibility of roads due to the disaster;
 - c) the individual is unable to reach his/her place of employment due to the damage or destruction of personal transportation caused by the disaster, and the state can reasonably assure that public and other transportation is also generally unavailable to the individual to reach his/her place of employment; and
 - d) the individual cannot work because of an injury that was caused as a direct result of the disaster, such as an injury from flying debris during a hurricane.
2. Question: When would an individual not be considered unemployed as a direct result of the major disaster?

Answer: The state will have to adjudicate these issues on a case-by-case basis and conduct the necessary fact-finding to make a determination. However, one example of when an individual is not unemployed as a direct result of a major disaster is when the individual was able to continue his/her employment (i.e., the same work was available), but s/he voluntarily decided to move out of the disaster area.

C. Proof of Wages/Proof of Employment Documentation and Monetary Determinations

DUA regulations at 20 CFR 625.6(e) provide that states must immediately determine a weekly benefit amount based on the individual's statement of employment and wages or self-employment income, on state records, or on documents submitted at the time an individual files a claim. The individual's weekly benefit amount will be based on wages or income in the most recent tax year that ended prior to the individual's unemployment that was a direct result of the major disaster.

DUA regulations at 625.6(e)(1) require that an individual submit documentation to substantiate the employment or self-employment or wages/income within 21 calendar days of the filing of the initial application for DUA.

1. Question: May a state hold payment of DUA until an individual provides proof of employment and/or wages?

Answer: No. DUA payments must be made with the greatest promptness administratively feasible. A state must determine an individual's eligibility for DUA based on the individual's statement of employment or self-employment at the time of the disaster and wages earned or paid during the DUA base period. States will adjudicate and pay the claim based on the individual's statement. However, within 21 calendar days from the date of filing the initial DUA application, an individual must provide documentation to substantiate:

- a. the individual was working, or was scheduled to begin work, at the time of the disaster and is unemployed as a direct result of the disaster; and
- b. the amount of wages earned or paid during the base period of the DUA claim.

2. Question: What documentation is acceptable for an individual to establish that he/she was employed or self-employed at the time of the disaster and unemployed as a direct result of the disaster?

Answer: The DUA regulations require an individual to show proof of employment or self-employment at the time of the disaster, and income or wages earned or paid. Such documentation can include, but is not limited to, copies of recent pay check stubs, bank receipts, billing notices, recent newspaper ads, recent business ads in the yellow pages of the telephone book(s), statement(s) from recent customers, and/or current business licenses, a statement from the last employer affirming the individual was working at the time of the disaster and became unemployed as a result of the disaster.

3. Question: What documentation is acceptable for an individual to establish that s/he was about to *commence* employment or self-employment in the area but was unable to do so as a direct result of the disaster?

Answer: Acceptable documentation can include, but is not limited to, copies of letters of hire, business registrations, building leases, business-related receipts, newspaper ads, yellow page telephone ads, and business related correspondence.

4. Question: The DUA regulations at 20 CFR 625.9(a)(2) state that if reliable records of employment/self-employment and wages/income are not obtainable, an individual's eligibility for DUA may be determined on the basis of an affidavit. May the DUA application form serve as an affidavit for this purpose?

Answer: Yes, provided the DUA application captures the necessary information regarding employment or self-employment, and wages earned or paid, to allow the state to determine an individual's eligibility for DUA.

5. Question: When an individual does not provide proof of employment or commencement of employment within the required 21 calendar days, what action(s) must be taken by the state?

Answer: The state must issue a denial of benefits and establish an overpayment for any benefits paid.

6. Question: How will the state calculate the DUA weekly benefit amount when an individual cannot provide proof of base period wages (i.e., wages for the most recent completed tax year) at the time a DUA claim is filed?

Answer: If the individual is otherwise eligible, the state will initially calculate the DUA weekly benefit amount (WBA) based on the individual's statement of earnings during the DUA base period. If the individual does not or cannot provide proof of earnings after 21-calendar days from filing the initial DUA application, the individual's weekly benefit amount will be reduced to the minimum DUA WBA, which is equal to 50 percent of the average weekly payment of regular compensation in the state (see 20 CFR 625.6(b)). The WBA must also be adjusted if the proof of earnings differs from his/her initial statement of earnings. If the adjusted WBA is lower than the original WBA, an overpayment must be established for any benefits overpaid.

7. Question: When an individual has no wages during the DUA base period but is otherwise eligible (the individual has substantiated s/he was working or commencing work at the time of the disaster and is unemployed as a direct result of the disaster), how will the DUA WBA be calculated?

Answer: If an individual has insufficient wages (or no wages) from employment or insufficient net income (or no net income) from self-employment in the applicable DUA base period to compute a WBA, the individual is entitled to a WBA equal to 50 percent of the average weekly payment of regular compensation in the state (See 20 CFR 625.6(b)). Certain exceptions apply to part-time workers as described in 20 CFR 625.6(b)(1).

8. Question: When an individual provides documentation proving he/she was employed or self-employed or was to commence employment or self-employment after 21-calendar days, may the state issue a redetermination?

Answer: If the state has a provision in its law that allows for redeterminations, then the state will, if the redetermination provision so provides, issue a redetermination and, as appropriate, cancel any overpayment (see 20 CFR 625.9(c)).

9. Question: When an individual is unable to provide a copy of the prior year income tax return, what other types of documentation are acceptable to establish monetary entitlement for DUA?

Answer: Acceptable documentation of wages earned or paid during the DUA base period (i.e., the most recent tax year that ended prior to the unemployment) includes, but is not limited to, state agency wage records, documents such as pay check stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements.

10. Question: Does the state use gross or net income to calculate the DUA weekly benefit amount for a self-employed individual?

Answer: States will use “taxable income” as reported on the individual’s tax return to calculate the DUA weekly benefit amount for a self-employed individual. “Taxable income” effectively is “net income” as the term is used in the question.

11. Question: Does the state use gross or net income to calculate the DUA weekly benefit amount for an individual whose wages are not covered for UC purposes?

Answer: States will use “total income” as reported on the individual’s tax return to calculate the DUA weekly benefit amounts for a non-covered employee. This income is also used to calculate the DUA WBA for individuals covered for UC (but who do not qualify for UC). “Total income” effectively is gross income as the term is used in the question.

D. Determining Individuals’ Ability to Work and Availability for Work

The DUA regulations at 20 CFR 625.4(g) require that an individual be able to work and available for work within the meaning of the applicable State law. An individual is deemed to meet this requirement if he/she is injured as a direct result of the disaster and/or in the case of an unemployed self-employed individual, the individual is performing activities which are solely for the purpose of enabling the individual to resume self-employment.

1. Question: If an individual is receiving DUA and during his/her claim series becomes injured in a disaster-related accident, would the individual meet the “able and available” requirement even though the injury resulted after the disaster incident itself?

Answer: The state will have to adjudicate these types of issues on a case-by-case basis and conduct the necessary fact-finding to make a determination. Two examples of when the state may determine that an injury, sustained after a disaster, is caused by a disaster, are when a roof that was damaged by a hurricane, later collapses causing injury to an individual, or when a gas line that cracked due to an earthquake, later explodes causing injury to an individual.

2. Question: Are there time limits or restrictions on how long a self-employed individual may take to restore a business if it is damaged or destroyed by a disaster?

Answer: No. However, unless the individual’s injury is caused by the disaster, in order to meet availability requirements, a self-employed individual must be actively working at restoring his/her business to remain eligible for DUA

3. Question: May a diversified farmer who normally works 60 – 80 hours per week continue to collect DUA if the farm’s main crop was destroyed by the disaster and the farmer is working only 40 – 50 hours per week on a secondary crop?

Answer: Yes, a diversified farmer who is working less than the farmer’s normal/ customary hours may continue to be eligible for DUA until s/he has resumed normal operations for periods s/he would have otherwise worked. However, 20 CFR 625.6(f)(2) requires that the farmer’s WBA be reduced by the gross amount of any income earned from secondary crops (or other business activities), by applying the earnings allowance for partial or part-total employment under the applicable state law. This may reduce the DUA WBA to zero.

4. Question: At what point would a fisherman, whose usual operations were impacted by the disaster, no longer be eligible for DUA?

Answer: When a fisherman has resumed his/her usual and customary activities and is working his/her usual and customary hours, s/he no longer has a “week of unemployment” as defined at 20 CFR 625.2(w)(2), and therefore is no longer eligible for DUA.

E. Other

1. Question: Is a self-employed farmer required to report income at the time it is earned or received?

Answer: A self-employed farmer must report income from the sale of crops during the week the payment is received even if the sale occurred in an earlier week (see 20 CFR 625.6(f)(2)).