

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION UI
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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 37-86

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : *Barbara Ann Farmer*
 BARBARA ANN FARMER
 Acting Administrator
 for Regional Management

SUBJECT : Food Stamp Intercept (Withholding from
 Unemployment Compensation)

1. Purpose. To advise State agencies of the amendments made by the Food Security Act of 1985, P.L. 99-198, to Title III of the Social Security Act (SSA), permitting the intercept of unemployment benefits to offset food stamp overissuances.

2. References. Section 1535 of P.L. 99-198; Section 303(d) of the Social Security Act; the Food Stamp Act of 1977, P.L. 95-133, 7 U.S.C. 2011 et seq.

3. Background. Section 1535(b)(3) of P.L. 99-198 amended Section 303(d)(2), SSA, to provide for the recoupment of "uncollected overissuances" of food stamp coupons from unemployment compensation. An "uncollected overissuance" is an overissuance of food stamp coupons resulting from fraud or willful misrepresentation which has not been recovered by repayment under Section 13(b)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(b)(1)). This change to Section 303 was necessary before such an intercept could be authorized because, with the exception of UI overpayments and child support intercept, Federal requirements prohibit interception of unemployment benefits to satisfy any public or private debt or claim.

The amendment to Section 303(d) creates options for the States regarding (1) requesting information from the claimant, (2) notifying the food stamp agency regarding the claimant's UI eligibility, and (3) deducting uncollected overissuances of food stamps. The amendments require the State Employment Security Agency (SESA) to pay any amounts withheld to the State food stamp agency. The amendments also require that all administrative costs of implementing these provisions will be borne by the food stamp agency.

RESCISSIONS	EXPIRATION DATE May 31, 1987
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The statutory language authorizing the food stamp intercept closely follows the language for child support intercept contained in Section 303(e)(2), SSA, with one major exception. The food stamp intercept provisions are permissive, not mandatory. This means that States have the option of which, if any, of the new provisions to implement. However, if any of the optional provisions are implemented, SESAs must adhere to certain requirements described in this UIPL. These requirements generally relate to reimbursement of costs and treatment of any amount withheld as a repayment of a food stamp overissuance and as a payment of UI to the claimant.

The effective date of the amendment to Section 303(d), SSA, made by Section 1535(b)(3) of P.L. 99-198 is December 23, 1985. The statutory language is attached.

4. Types of Unemployment Compensation Subject to Intercept. "Unemployment compensation" is defined in Section 303(d)(2)(A), SSA, as including any regular, extended or additional unemployment compensation payable under State law, and amounts payable under any Federal unemployment compensation law administered under an agreement by the SESA. This includes payments made under the UCFE and UCX programs, trade readjustment allowances payable under the Trade Act of 1974, disaster unemployment assistance payable under Section 407 of the Disaster Relief Act of 1974 and weekly layoff and vacation replacement benefits payable under the Redwood National Park Expansion Act (P.L. 95-250). States which apply the food stamp intercept provisions to State unemployment compensation, must also apply the provisions to the UCFE, UCX, TRA and DUA programs.

5. Disclosure to Food Stamp Authorities. Under the amendments to Section 303(d)(2)(B)(i), SSA, SESAs may require each new claimant to indicate whether an uncollected overissuance of food stamps is owed. SESAs may, for example, add a question to the initial claim form. This question should be separate from the question regarding child support intercept, but the language may be similar. If the claimant indicates that an uncollected overissuance exists, and the claimant is eligible for unemployment compensation, the SESA may notify the State food stamp agency of the claimant's eligibility for unemployment compensation.

Acknowledgment that a food stamp overissuance is owed is not sufficient to allow SESAs to deduct an amount from a claimant's unemployment compensation. An amount must first be determined under one of the methods provided for under clause (iii) of Section 303(d)(2)(B), SSA, which are described in Section 6 of this UIPL. Until this amount is determined, benefits otherwise due shall be paid without deduction for uncollected overissuances. When an amount is determined, the SESA may, if State law so provides, withhold the amount specified from future benefit payments.

6. Methods for Recouping Overissuances. Under clause (iii) of Section 303(d)(2)(B), SSA, SESAs may deduct and withhold from any unemployment compensation payable to an individual an amount determined by any of the following methods:

a. The amount specified by the individual to the SESA. The claimant may specify in writing to the SESA the amount to be deducted and withheld from each benefit payment. We urge SESAs to clear these amounts with the food stamp agency before any intercept is made. Subclause (I) of Section 303(d)(2)(B)(iii).

b. The amount determined under an agreement between the individual and the State food stamp agency. Section 13(c)(3)(A)(ii) of the Food Stamp Act of 1977 specifies that the food stamp agency is responsible for submitting a copy of this agreement to the SESA. The SESA may not intercept benefits under this method until the food stamp agency furnishes the SESA a copy of the agreement. Subclause (II) of Section 303(d)(2)(B)(iii).

c. An amount required to be deducted and withheld under a court order obtained by the food stamp agency. Section 13(c)(3) of the Food Stamp Act of 1977 provides that the State food stamp agency may, in the absence of an agreement entered into under Section 13(c)(3)(A), obtain a "writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation." When a court order is served under a State law which provides for the food stamp intercept, the SESA is required to intercept future benefit payments to the claimant in the amount specified in the order. Subclause (III) of Section 303(d)(2)(B)(iii).

7. Amounts to be Deducted and Withheld. Before withholding an amount for uncollected overissuances, the SESA shall first apply State law provisions regarding disqualifying income and recoupment of overpayments. Child support obligations will also be deducted before Food Stamp overissuances. If, due to other deductions, the amount remaining is less than the amount specified to be deducted for uncollected overissuances, only the amount remaining may be intercepted. The SESA may not increase the amount to be deducted from a subsequent week's payment to make up the deficit. Section 303(d)(2)(C) requires that any amounts withheld and forwarded by SESAs shall be treated as payment to the claimant of unemployment compensation due, and shall be treated as repayment of the individual's uncollected overissuance. This eliminates any basis for a claim against the SESA for any amounts forwarded to the food stamp agency under the permissive language of Section 303(d)(2), SSA.

8. Administrative Cost Paid by State Food Stamp Agencies. Section 302(d)(2)(D) requires the State food stamp agency to reimburse the SESA for administrative costs incurred in the administration of the food stamp intercept provisions. Because granted funds may not be used for this purpose, the Department interprets Section 302 and 303, SSA, as requiring the SESAs to collect from the State food stamp agencies all costs incurred in administering the food stamp intercept provisions. These costs include start-up and continuing costs. Because no granted funds under Title III, SSA, will be provided or may be used to administer the food stamp intercept provisions, SESAs should require payment in advance.

A written agreement between the SESA and the food stamp agency is needed and should include specific terms regarding the information and services supplied by the SESA to the State food stamp agency, the costs covered and charges to be made for all information and other services, billing and payment arrangements (including advance payment), handling of errors, adjustment of prices and termination. It may be possible for the SESA to amend an existing agreement with the State food stamp agency rather than create a new agreement. In any case, SESAs may undertake activities under Section 303(d)(2) only after agreements for reimbursement of all costs have been made.

9. Amendments to State Law. States wishing to implement any of these provisions will need to review their laws to determine whether amendment of the State law is needed to permit the intercept of food stamp overissuances. Because all State laws contain provisions voiding any agreement to waive benefit rights or any assignment of such benefits, and presumably preclude attachment, levy, garnishment, etc. of benefits, we assume such amendments will be necessary. Amendments for this purpose should be crafted to avoid interpretations allowing any expansion of the exceptions provided in Section 303(d), SSA, and to provide the SESA clear authority for interception and administration fully consistent with Section 303(d)(2).

10. Procedural Guidelines. Since the provisions for food stamp intercept closely follow the provisions for child support intercept, the procedural steps and agreement should be quite similar. SESAs deciding to implement the food stamp intercept provisions may wish to review their procedures for the child support intercept to determine their applicability to the food stamp provisions. SESAs should particularly note the following:

a. Notice to Claimants. SESAs must give each claimant an initial, written notice which explains the beginning date and amount of deduction from each weekly benefit payment, the remitting of amounts to the State food stamp agency, and the legal consequences of such withholding and remittance as set forth in Section 303(d)(2)(C). This notice may be issued with the first benefit check from which a deduction is made. The notice must explain the authority for the deduction and include the claimant's right to appeal and that any appeal is limited to the validity of SESA's authority to make deductions and the accuracy of the amount deducted. Claimants should be advised to seek remedy through the court or food stamp agency when the reasonableness or fairness of the amount deducted is questioned. Issuing notices and processing appeals are administrative costs which are payable by the State food stamp agency.

b. Accounting. ETA does not plan on any reporting requirements. However, SESAs should maintain separate accounting and billing records for food stamp intercept to support these costs if audited by State or Federal

authorities. Any additional costs incurred by SESAs in maintaining such records will be borne by the State food stamp agency.

c. Interstate Claims. Procedures for interstate claims will be the same as for child support intercept. No intercept of food stamp overissuances will be made unless the liable State has entered into an agreement with the State owed the overissuance. To enter into an agreement, a SESA must have the authority under State law to perform such an intercept.

11. Action Required. SESAs are requested to cooperate with State food stamp agencies desiring to implement the food stamp intercept provisions of Section 303(d)(2), SSA.

12. Inquiries. Inquiries should be directed to the appropriate regional office.

13. Attachment. Amendment to Section 303(d)(2), SSA.

Section 1535(b)(3) of P.L. 99-198 redesignated paragraphs (2) and (3) of Section 303(d), SSA, as paragraphs (3) and (4), respectively, and added new paragraph (2). New Section 303(d)(2) now provides as follows:

(2)(A) For purposes of this paragraph, the term "unemployment compensation" means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law--

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in Section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual--

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977, or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act, and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.