

UNEMPLOYMENT INSURANCE
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK

LEGAL AND ADMINISTRATIVE PROVISIONS

INTRODUCTION

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.

SSTATE 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.