

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.).