

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 09-19

TO: STATE WORKFORCE AGENCIES

FROM: MOLLY E. CONWAY /s/
Acting Assistant Secretary

SUBJECT: Disaster Unemployment Assistance (DUA): DUA Claims Documentation and Late Appeals

1. **Purpose.** To provide additional guidance to state workforce agencies concerning: 1) DUA documentation requirements for individuals filing DUA claims; and 2) applying the state law provision(s) for late filing of regular Unemployment Compensation (UC) appeals to DUA appeals.
2. **Action Requested.** State Administrators should provide this information to appropriate staff and implement business processes necessary to carry out this guidance.
3. **Summary and Background.**
 - a. DUA provides temporary income support 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 are required to submit documentation and demonstrate that they were employed, self-employed, or were scheduled to begin employment or self-employment at the time of the disaster (referred to in this Unemployment Insurance Program Letter (UIPL) as “employment”). Individuals are also required to submit documentation of wages earned or paid to establish their monetary entitlement.
 - b. The DUA regulations at 20 Code of Federal Regulations (CFR) Part 625 must be construed in a manner to allow states to achieve the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) in providing financial assistance to eligible individuals after a major disaster has occurred. The U.S. Department of Labor (Department) recognizes the difficulty and impracticality a disaster may cause for many disaster-impacted individuals in providing the necessary documentation at the time of filing a DUA claim. Therefore, the Department is providing further guidance to states regarding DUA program administration.

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4. DUA Claim.

This UIPL provides states with guidance on how to handle a variety of issues concerning late submissions of DUA claims. Specifically, this guidance addresses a claimant's late submission of documentation of employment (Section 4(b)); a claimant's submission of documentation of wages beyond the 21-day rule (Section 4(c)); the process for a state to request an extension of the document submission deadline (Section 4(d)); and the timing of appeals for DUA determinations or redeterminations (Section 4(e)).

- a. General DUA Claim Filing Requirements.** When filing an initial DUA application, if an individual does not have the required documentation to substantiate employment or wages, DUA benefits are payable based on the individual's affidavit.¹ The individual has 21 days to present the required documentation to continue receiving payments.² If the 21st day ends on a holiday, weekend, or other non-business day, then the individual has until the close of the next business day to submit the required documentation. 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.

- b. Documentation of Employment to Determine Whether an Individual's Unemployment is Caused by a Major Disaster Submitted After the 21-Day Deadline.** When an individual does not provide documentation demonstrating proof of employment within 21 days, the state must discontinue payments, issue a denial of benefits for any payments received by the individual, and establish an overpayment, as provided at 20 CFR 625.6(e)(2). As provided at 20 CFR 625.14(a), the individual is liable to repay the established overpayment and the state must take all reasonable measures under the law to recover the total sum of the DUA payments made to the individual.

UIPL No. 22-08 reinforced 20 CFR 625.9(c), which provides DUA claimants with the same rights to a redetermination with respect to DUA that regular UC claimants in that state would have with respect to their regular UC claims. The UIPL also clarified the submittal of late documentation related to employment. While the DUA regulations are silent with respect to individuals submitting documentation proving employment after the 21-day deadline, the Department has concluded that if a state has a provision in its law that allows for redeterminations for regular UC, then the state must issue a redetermination and, as appropriate, cancel any overpayment.³

Sections 625.6(e)(2) and 625.9(c) of the DUA regulations work in conjunction to establish that a determination as well as a redetermination shall be issued promptly. The 21-day rule means that the individual may not receive DUA for more than 21 days

¹ 20 CFR 625.9(a)(2) provides that "an individual's eligibility for DUA shall be determined, where a reliable record of employment, self-employment and wages is not obtainable, on the basis of an affidavit submitted to the State agency by the individual"

² 20 CFR 625.6(e)(1) and ET Handbook No. 356, Chapter IV-4.

³ UIPL No. 22-08, Attachment, Question 8 at page 4.

without documentation of employment. If a claimant, however, later submits documentation demonstrating proof of employment, and if the state's law allows a redetermination, then the state must reconsider the matter consistent with its law. The 21-day rule is not a limit on when the state can accept documentation if state law provides for redeterminations. Instead, it is a limit on how long DUA is payable pending documentation of employment.

If the state redetermination provision allows for submission after 21 days and the claimant provides sufficient documentation to substantiate employment at the time of the disaster, then (assuming all other eligibility requirements are met):

- 1) The overpayment must be cancelled;
- 2) The state must pay any gap week(s) (the period of time beginning 21 days after a claim was filed and ending when the state redetermines that the individual's submitted documentation substantiates their employment at the time of the disaster); and
- 3) The individual is eligible for benefits for the remainder of the period of eligibility as long as continuing eligibility requirements are met.

c. Documentation of Wages to Determine the DUA Weekly Benefit Amount Submitted After the 21-day Deadline. 20 CFR 625.6(e)(4) and Employment and Training (ET) Handbook No. 356 (Chapter IV-5) make it clear that submitting proof of wages for purposes of calculating the DUA monetary entitlement can be done at any time prior to the end of the Disaster Assistance Period (DAP). When an individual fails to submit documentation to substantiate earnings within 21 days (documentation of wages earned or paid during the base period, including those cases where the individual has not filed a tax return for the most recent tax year that has ended), then the individual's DUA WBA will be the minimum DUA WBA, which is equal to 50 percent of the average UC weekly amount.⁴ For purposes of DUA, the base period used for calculating the DUA WBA is the individual's most recent complete tax year prior to the individual's unemployment that was a direct result of the major disaster.

If the individual's DUA WBA was reduced because the individual only submitted employment and not wage documentation, the individual may submit necessary documentation to substantiate wages earned or payment during the base period at any time prior to the end of the DAP. The state shall immediately issue a redetermination increasing the DUA WBA if proof of wages earned or paid for services performed in employment is sufficient to permit the higher DUA WBA computation under state UC law provisions. The higher redetermined DUA WBA will be applicable to all weeks during the disaster assistance period for which the individual was eligible for DUA.⁵

⁴ 20 CFR 625.6(a), (b), and (e)(3), ET Handbook No. 356, Chapter IV-4, and UIPL No. 22-08, Attachment, Questions 6 and 7, at page 4. In addition, the Department publishes quarterly the minimum DUA WBA.

⁵ 20 CFR 625.6(e)(4) and ET Handbook No. 356, Chapter IV-5.

d. ETA Flexibility to Extend the 21-day Document Submission Deadline. The Stafford Act and its implementing regulations permit the Department to modify or waive, for a major disaster, administrative conditions that would otherwise prevent the giving of federal assistance if the inability to meet such conditions is a result of the major disaster.⁶ To obtain this flexibility, states must submit an application to their Regional Office requesting the flexibility and demonstrating that individuals seeking DUA benefits are unable to meet this administrative condition because of the major disaster.

The Department may grant requests for extension of the 21-day period if a major disaster significantly devastates an impacted area (such as the devastation experienced in the aftermath of Hurricanes Katrina, Rita, Sandy, Irma, and Maria). The Department considers a disaster to have significantly devastated an area if the disaster situation resulted in widespread displacement of disaster victims, lack of electricity, and destruction of infrastructure and the means of communication. The Department will consider these types of factors, among others, when reviewing requests for flexibility under the Stafford Act.

For example, as a result of the significant devastation related to Hurricanes Irma and Maria in 2017 and upon the states' requests, the Department exercised this authority under the Stafford Act and extended the 21-day document submission deadline to 90 days. Due to the significant devastation that resulted from the hurricanes, the Department found that it was difficult or impossible for many individuals to provide necessary documentation within the 21-day timeframe. In addition, the government entities in these impacted areas had limited ability to replace such documents. The destruction of communications infrastructure magnified these challenges in the impacted areas.

e. Appeals. The applicant may appeal a DUA determination or redetermination within 60 days from the date the determination or redetermination was issued in the same manner and to the same extent as provided to regular UC claimants under the applicable state law.⁷

If a state's UC law has a "good cause" provision (or other similar provision or exception) for late filing of regular UC appeals, such provision also applies to DUA appeals. The state must examine the reason for the late filing in the same manner and to the same extent that it does for untimely filed regular UC appeals.

5. Inquiries. Please direct inquiries to the appropriate Regional Office.

6. References.

- Section 303(a)(3) of the Social Security Act;

⁶ 42 U.S.C. 5141 and 44 CFR 206.5(h).

⁷ 20 CFR 625.10(a).

- Sections 301, 410, and 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended;
- 20 CFR Part 625;
- 44 CFR Section 206.5;
- ET Handbook No. 356, *Disaster Unemployment Assistance*; and
- UIPL No. 22-08, *Disaster Unemployment Assistance- Questions and Answers*, dated July 2, 2008.

7. **Attachments.** Not applicable.