

UNEMPLOYMENT INSURANCE  
DISASTER UNEMPLOYMENT ASSISTANCE HANDBOOK**GENERAL PROVISIONS****I**NTRODUCTION

**1. Relationship of Unemployment Compensation (UC) to DUA.** The first line of defense to an individual's unemployment due to a disaster is the unemployment compensation program. Section 410(a) of the Stafford Act prohibits the payment of DUA for any week of unemployment for which an unemployed individual qualifies for unemployment compensation or waiting period credit under any Federal or State law. The purpose of the DUA program is to provide unemployment assistance to those individuals who become unemployed or cannot commence employment as a direct result of a major disaster but are not covered under the Federal or State UC programs. Therefore, DUA is not payable in lieu of, or in addition to, UC.

**E**LIGIBILITY

**2. General DUA Eligibility Requirements.** DUA payments are designed to provide assistance to the individual who is unemployed as a result of a declared disaster and is not eligible for unemployment compensation but meets the DUA qualifying requirements. DUA is not payable as a supplement to unemployment compensation for the same week of unemployment, nor is it payable for any unemployment compensation waiting period required under State UC law. Like the unemployment compensation program, the DUA program is designed to provide temporary partial income replacement so that the individual unemployed as a result of a declared disaster can provide for the necessities of living. DUA is not designed to provide 100 percent income replacement or to ameliorate business losses to self-employed individuals who suffer such losses due to a disaster.

In order to qualify for DUA, individuals must be unemployed or partially unemployed at their on-going employment or self-employment as a direct result of the major disaster or must be prevented from commencing employment or self-employment. This includes individuals who reside in the major disaster area but are unable to reach their place of employment or self-employment outside of the major disaster area, and individuals who must travel through a major disaster area to their employment or self-employment, but who are unable to do so as a direct result of the major disaster. When a major disaster occurs that directly prevents an individual from performing services, i.e., meeting one or more of the causes of unemployment set out in 20CFR 625.5, the individual should not be denied eligibility simply because he/she actually worked outside the major disaster area or was to commence work outside the disaster area.

These eligibility considerations are also applicable to individuals becoming new breadwinners as a direct result of the disaster. In making eligibility determination pertaining to individuals who must travel out of or through the disaster area, the State will consider factors such as alternate means of transportation, other routes to work where the major disaster has disrupted the usual and/or shortest route, commuting patterns in the area, and the reasonableness of utilizing such alternatives to continue employment or self-employment.

**a. Unemployed Worker.** For DUA purposes, an unemployed worker is one who worked in or was scheduled to begin work in the major disaster area at the time of the major disaster and whose principal source of income and livelihood is dependent upon the worker's employment for wages. Such worker's full or partial unemployment will be considered to be caused by the major disaster if, as a direct result of a disaster, the worker:

- (1) has a "week of unemployment" as defined in 20 CFR 625.2(w)(1) following the "date the major disaster began" as defined in 20 CFR 625.2(e); or
- (2) is unable to reach the place of employment, or
- (3) was to have started work and does not have the job or is unable to reach the job, or
- (4) an individual has become the breadwinner or major support for a household because the head of household died as a direct result of the major disaster<sup>1</sup>, or
- (5) cannot work because of an injury caused as a direct result of the major disaster.

Unless a worker meets one of these criteria, such worker will not be considered unemployed due to the major disaster and, therefore, not eligible for DUA.

**b. Unemployed Self-Employed Individual.** For purposes of DUA, an unemployed self-employed individual is an individual who was employed in or was to commence employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in 20 CFR 625.5(b). The unemployment of an unemployed self-employed individual is caused by a major disaster if:

---

<sup>1</sup> In order for an individual who has become the breadwinner or major support for a household, because the head of the household has died as a direct result of the major disaster, to be considered an "unemployed worker" for DUA purposes, the individual generally shares the same household with the head of household and is related by blood, marriage, adoption, or other legal arrangement to the head of the household. Additionally, the deceased head of household must have provided, through employment for wages or self-employment, one-half or more of the household income or means of livelihood during the base period utilized for purposes of computing a DUA weekly amount under 20CFR625.6, or would have provided such income but for unemployment during the base period.

- (1) the individual has a "week of unemployment" as defined in 20 CFR 625.2(w)(2) following the "date the major disaster began" as defined in 625.2(e), and such unemployment is a direct result of the major disaster; or
- (2) the individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or
- (3) the individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or
- (4) the individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

Unless a self-employed individual meets one of these criteria, such individual will not be considered unemployed due to the major disaster and, therefore, not eligible for DUA.

In some cases self-employed individuals can be substantially impacted by a major disaster even though they are still able to perform some of their customary services in self-employment. Such individuals, for example, diversified farmers can be eligible for partial DUA payments even if they are still able to render some of their customary services in self-employment. The determination of eligibility will be based on the individual performing less than his full time customary services and earning wages less than the applicable state law earnings limit. Likewise, a farmer may elect to grow an alternate crop rather than his/her customary crop due to a disaster shortened growing period. Eligibility must be based on the hours of work required each week for growing an alternate crop compared to the usual and customary hours for growing the farmer's customary crop.

It should be noted that restorative or clean-up work which is necessary because of the disaster will not make an individual ineligible for DUA. Also, "salvaging" or other limited self-employment activity alone would not necessarily make an individual ineligible for DUA if the individual performs customary services less than full time and did not have earnings exceeding the states earnings limitation. However, the full range of an individual's activities must be considered in making an eligibility determination; for example, in the case of a farmer, whether the farmer not only is performing clean-up work but also has resumed normal plowing and planting activities is an important factor. If so is an important factor, the individual would no longer be eligible for DUA. Each individual's situation must be evaluated on its own facts.

## **D**IRECT RESULT

c. **Unemployment is a direct result of the major disaster.** When considering the reasons for unemployment in paragraphs a. or b. above, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not a result of a longer chain of events hastened by the disaster or having a ripple effect throughout the economy. An individual's unemployment is a direct result of the major disaster if it resulted from:

- (1) the physical damage or destruction of the place of employment;
- (2) the physical inaccessibility of the place of employment in the disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster, or
- (3) lack of work, or loss of revenues, by an employer or self-employed individual, of at least a majority of its revenue or income from an entity that was either damaged or destroyed in the disaster or an entity in the major disaster area closed by the federal, state or local government.

**d. Direct Causes of Unemployment.** Initial and continuing eligibility for DUA depends on a finding that the individual is an unemployed worker or unemployed self-employed individual whose partial or total unemployment is a direct result of the major disaster. The unemployment of the individual must occur on or after the beginning date of the disaster and be a direct result of the disaster. The unemployment can occur after the ending date of an incident period determined by FEMA (the ending date of the incident or cause of the disaster), but still be a direct result of the major disaster. Included in the definitions of unemployed worker and unemployed self-employed individual are individuals who were to commence employment or self-employment in or outside the major disaster area at the time the major disaster began and are prevented from doing so by the disaster. The definitions also includes individuals who reside in the major disaster area but are unable to reach their place of employment or self-employment outside of the major disaster area; and individuals who must travel through a major disaster area to their employment or self-employment, but are unable to do so as a direct result of the major disaster; or employed or self-employed individuals who were injured as a direct result of the disaster or a visitor or tourist who were in the disaster area at the time of the disaster and were injured and unable to return to work outside of the disaster area.

DUA is payable only for a week of unemployment, during the disaster assistance period, that continues to be the direct result of the major disaster. Therefore, if the State agency finds a DUA applicant has failed, without good cause, to accept a referral to suitable work, or is not able and available for work for reasons not due to the major disaster, or whose unemployment for any other reason can no longer be directly attributable to the major disaster, the applicant is no longer unemployed as a direct result of the disaster and DUA eligibility must be terminated.

In some cases, industry experts can be consulted in evaluation DUA claims and making determinations. In the case of agricultural farming industry workers and the self-employed, personnel versed in rural program matters at both the State and County levels, such as County Extension Agents and State Department of Agriculture staff or staff located at the State land grant college could be consulted. In the case of other agricultural industry, professional or technical staff working in that industry should be familiar with the nature and extent of damage that has resulted in varying periods of unemployment. Their assistance should be helpful in determining the duration of unemployment that can be considered attributable to the major disaster.

As an example, agricultural industry workers or self-employed individuals are not eligible for DUA for any period(s) such individuals are customarily not working, and industry experts can advise when that is the case regarding these DUA claimants. During the disaster assistance period these individuals may move in and out of weeks of DUA eligibility several times. Claims operations should be carefully coordinated with agricultural industry information. Other industry groups may need to be consulted in non-agricultural disaster situations. For example, tourist industry associations can be consulted in the case of a disaster causing a decline in tourist visiting an area.

Individuals cease to be eligible for DUA when their partial or total unemployment is no longer caused by the major disaster, or when they fully resume their customary services in self-employment or otherwise are no longer partially or part-totally unemployed as required by 20 CFR 625.2(w).

**e. DUA Eligibility and Special Self-Employed Examples.** In order for any self-employed individual to establish eligibility for full or partial DUA, the State must determine that: 1) the individual, as a direct result of the disaster, has a week of total, part-total or partial unemployment as defined in 20 CFR 625.2(w)(2); and 2) the individual's unemployment is a direct result of the disaster, particularly, because of lack of work or loss of revenues the individual or business received a majority of its revenue or income from an entity in the major disaster area as set forth in 20 CFR 625.5(c). As soon as such individual can fully resume his/her customary hours or services in self-employment or has earnings not exceeding the earnings allowance prescribed in the applicable state law, he/she is no longer eligible for DUA. In addition, as soon as an individual determined eligible because he/she lost over a majority of his/her income as a direct result of the disaster, returns to work and starts earning income equal to his/her pre-disaster level, the individual can no longer be considered unemployed as a direct result of the disaster. Each self-employed individual's situation needs to be evaluated on a case-by-case basis taking these factors into account. As examples:

- (1) An individual operates a service business out of his/her home that is located in an affected county as defined in the declaration. The home business is the individual's primary source of income. The flood which is declared a major disaster damages part of the individual's home office operation. The individual is not eligible for UC, but is awarded DUA. In the eighth week, the individual has completed clean up of his/her home office and replaced any damaged equipment and is able to again provide full-time services. The individual ceases to be eligible for DUA in eighth week.
- (2) The same scenario as in (1) above, but as a direct result of the disaster, there are not sufficient customers utilizing the service, causing the individual to work less than his/her usual and customary hours. The individual continues to be eligible for DUA until there are enough customers in a week to warrant the claimant resuming pre-disaster full-time hours work.
- (3) The individual operates a day care center with 6 children. As a direct result of the disaster, four of the children are unable to reach the day care center. Since the individual has lost his/her customers, he/she could be considered unemployed directly due to the disaster only if such individual could not perform his/her usual and customary services. It is likely that continuing to take care of 2 children may require full-time services and if so, the claimant would not meet the able and available eligibility requirements under 20 CFR 625.4 and would not have a "week of unemployment".
- (4) A farmer who harvests a limited portion of his crop via salvaging over a brief one or two-week period, could resume or start DUA weekly payments after the termination of salvaging operations.

- (5) A taxi driver loses a majority of income (over 50 percent) as a direct result of the disaster. The individual will remain unemployed and potentially eligible for DUA until full-time hours are again reached by the individual or his/her income reaches the pre-disaster level. For example, if an individual had \$500 earnings per week of which \$300 were lost as a direct result of the disaster, he/she would remain unemployed until full-time hours were reached or \$500 in earnings is reached (or whenever the amount exceeded the earnings allowance under the state law). If the individual's hours are less than full-time, earnings up to the earnings allowance under the state's law would be deductible under state law provisions governing the earnings allowance for partial and part-total employment. (*See 20 CFR 625.6(f)*).

## SPECIAL APPLICANTS

**f. Migrant Workers.** In general, a migrant worker unemployed as a result of a major disaster is an individual who worked (or was scheduled to work) as an employee in the major disaster area at the time of such major disaster and, due directly to the major disaster, no longer has a job, or cannot reach the place of work, or cannot perform the job because of damage to the place of work. For example: Floods are declared as a major disaster in March, and DUA is included in the declaration. The planting season for corn begins in March. Migrant seasonal farm workers typically assist in the planting of corn in an area declared as affected by the disaster. These farm workers are prevented from their normal planting activities because of the rains and floods in March and, therefore, are potentially eligible for DUA. Agricultural and other workers whose normal work depends upon movement from one area to another will be deemed living in the major disaster area for the purposes of DUA if their presence in such disaster area is consistent with the normal or reasonable migration required by their usual occupation. Applications filed by such workers require special fact-finding. In completing initial applications, the names and addresses of the most recent and base period employers should be obtained.

**(1) Benefit Duration.** Because of the seasonal aspect of their employment, eligible migrant workers may be paid DUA only for those weeks that they would have been employed except for the fact that a major disaster intervened. DUA is payable to an applicant for a week of unemployment if with respect to such week the applicant's unemployment is found to be the result of the major disaster. Thus, a worker whose employment at the time of the major disaster would have continued for another 4 weeks and then be terminated, would be potentially entitled to DUA for this period of time if the major disaster interrupted such employment and prevented the worker from continuing to work during the 4-week period. Circumstances will vary in individual cases and will require necessary fact-finding at the local office level. Before establishing entitlement, the date the applicant would have started work, except for the major disaster, and the probable duration of the employment should be verified to the extent possible.

**g. Seasonal Workers.** Other unemployed individuals who are normally employed in an industry where, because of climatic conditions or the seasonal nature of the employment, the industry operates only during a regularly recurring period or periods, may be eligible for DUA during such periods. The loss of such potential employment or self-employment may provide the basis for DUA eligibility to such individual for the period the individual would be working except for the major disaster. If at the time of the major disaster, the individual was employed, self-employed or scheduled to begin work in the major disaster area, and due directly to the disaster, no longer has a job or cannot reach the place of employment, DUA may be payable to such individual.

**(1) Benefit Duration.** Because of the seasonal aspect of their employment, seasonal workers may be paid DUA only for those weeks that they would have been employed except for the fact that a major disaster intervened. DUA is payable to an applicant for a week of unemployment if with respect to such week the applicant's unemployment is found to be the direct result of the major disaster. Thus, a worker whose employment at the time of the major disaster would have continued for another 4 weeks and then be terminated, would be entitled to DUA for this period of time if the major disaster interrupted such employment and prevented the worker from continuing to work during the 4-week period.

Circumstances will vary in individual cases and will require necessary fact-finding at the local office level.

**h. School Employees.** 20 CFR 625.6(a)(1) of the DUA Regulations provides (in computing the weekly DUA amount) that, "...qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied,...., but shall not include employment or self-employment, or wages earned or paid for employment or self-employment, which is contrary to or prohibited by any Federal law..."

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(6)(A)(ii)), provides that wages earned or paid for services performed in an instructional, research or principal administrative capacity for an educational institution, shall not be used to determine monetary entitlement under certain conditions. FUTA permits wages earned or paid for services performed in any other capacity for an educational institution to be denied according to state law.

Accordingly, employment and wages earned by certain school employees or persons employed under the educational system may not be used as the basis for UC eligibility during specified periods (e.g. summer recess, winter break). Therefore, in accordance with the requirements of 20 CFR 625.6, employment and wages earned by certain school employees or persons employed under the educational system may not be used as the basis for DUA eligibility during the periods specified in Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (26 U.S.C.3304(a)(6)(A)).

**i. Full-Time Students.** Initial applications filed by full-time students must be given careful consideration when determining whether or not they are unemployed due to the major disaster within the meaning of the DUA provisions. The major objective of the DUA program is to help those individuals whose primary income and livelihood is dependent upon the performance of services for another or in self-employment, and who have suffered the loss or interruption of such means of livelihood as the result of a major disaster. However, the Department also recognizes that members of a family under the age of majority often perform services in employment and self-employment for families or family businesses, particularly in the agricultural industry. Such employment or self-employment is usually performed during periods such individuals are not attending school and may be full-time during vacation or between term periods, and part-time or not at all during times that school is in session.

The fact that such individuals are under the age of majority does not, in itself, mean these individuals are not entitled to DUA. These individuals would be entitled to DUA if they meet the definition of unemployed worker or unemployed self-employed individual at 20 CFR 625.2(s) and (t) and the eligibility requirements for a week of unemployment in 20 CFR 625.4. This objective is in accordance with the apparent Congressional intent as expressed in the Committee report when the DUA provisions were first enacted in 1969:

"The purpose of this section is to enable compensation to be paid to those few persons who might lose their livelihood because of destruction wrought in a major disaster . . . ."

This intent has generally been interpreted to require that the individual's activities, the loss of which is claimed to have resulted in unemployment, must have been the individual's principal source of income and means of livelihood.

Earnings of full-time students who work part-time or who assist in the operation of the business or farm frequently represents only incidental income rather than the principal means of their livelihood. Applicants of this type are primarily students attending school on a full-time basis, not persons who have suffered the loss of their livelihood. Within the meaning of the DUA provisions, they would not be considered to be unemployed due to the major disaster and eligible for DUA simply because their source of incidental income while attending school was interrupted.

**j. Aliens.** Any individual, in order to be considered eligible for DUA for a week, must be able and available for work within the meaning of the applicable State law. This able and available requirement pertains to all applicants for DUA, including aliens.<sup>2</sup>

Congress' concern with the payment of benefits to certain aliens is expressed in two other provisions of Federal unemployment compensation law. Section 303(f) of the Social Security Act (SSA) requires States to administer an income and eligibility verification system which meets the requirement of Section 1137 of the SSA. Section 1137(d) of the SSA provides that, as a condition of eligibility for unemployment compensation, a State shall require each individual to sign a declaration, under penalty of perjury, whether the individual is a citizen or national of the United States, and, if not, whether he/she is in "satisfactory immigration status." If the alien is denied because they are not in satisfactory immigration status, as verified with the Immigration Naturalization Service, the right to a fair hearing is provided the alien. In addition, Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (commonly called the Welfare Reform Act), provides that Federal unemployment compensation, which includes DUA, is a federal public benefit. In order to be eligible for a federal public benefit (DUA) an individual must be a "qualified alien" as defined in the Act.

Under both the Section 1137(d) and the Welfare Reform Act an alien must be a qualified alien in satisfactory immigration status. As set forth in Chapter III, Section 3.d., of this Handbook, State agencies must verify the status of every individual applying for DUA who indicates on the initial application for DUA that he/she is **not a U.S. citizen**. Personnel of the INS at both the regional and State levels are versed in verification of employment eligibility, if questions should arise.

---

<sup>2</sup> The Department addressed the availability requirement for unemployment compensation as it pertains to aliens in UIPL 1-86 (51 FR 29713, August 20, 1986) and UIPLs 12-87 (54 FR 10102), and 12-87, Change 1 (54 FR 10113) and 6-89 (54 FR 10116) all published on March 9, 1989. A discussion of the application of the able and available requirement was provided in the preamble to the final rule published on May 16, 1991 (56 FR 22800). The Department stated in these documents that an alien must be authorized to work by the Immigration and Naturalization Service (INS) to be available for work.

**3. Reemployment Assistance Service.** Section 410(b) of the Stafford Act as amended provides that a "State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section." Subsection 410(b)(2) provides that "[t]he President may provide [Federal] reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services." All applicants as well as any other individuals who are unemployed as the result of such disaster must be afforded employment services (including counseling and referrals to suitable work opportunities and suitable training) to assist them in obtaining suitable work as soon as possible.

## STATE LAW USES

**4. Applicability of State Law Provisions.** The applicable State for an individual is the State in which the individual's unemployment is the result of the major disaster (*See 20 CFR 625.12*). As specifically set forth at 20 CFR 625.11, the **terms and conditions of the State law** of the applicable State for an individual, which apply to claims for, and the payment of, regular compensation, **shall apply to** applications for, and the payment of, **DUA** to each such individual **only as specifically set forth in the DUA regulations**, and subject to the following limitations: (1) only pursuant to an Agreement entered in accordance with the Stafford Act and Part 625 of the Code of Federal Regulations, and with respect to weeks in which the Agreement is in effect; and (2) only with respect to weeks of unemployment that begin during a Disaster Assistance Period.

**5. Able and Available for Work.** An applicant must be able to work and available for work according to State law requirements but if the applicant's inability to work is the result of an injury caused by the major disaster, the applicant will be deemed to meet this requirement. An unemployed self-employed applicant will not be considered unavailable for work if he or she is engaged in activities solely for the purpose of resuming self-employment. (*See 20 CFR 625.4(g).*)

When the State agency receives information from an applicant which indicates that the applicant has become disabled and this disability is not due to the major disaster, the State agency will apply the able and available provisions of the applicable State law for the period of the disability. If the State agency determines the applicant is not able and available, the applicant will not be eligible for DUA during the period of the disability. The applicant will be notified of the determination and the right of appeal.

**6. Suitable Work.** For the purposes of eligibility to receive DUA, in determining whether work is suitable, the suitability criteria in the State unemployment compensation law, including the labor standards provisions required by Section 3304(a)(5) of the FUTA, will be used. Once an individual obtains suitable employment, he/she is no longer eligible for DUA. Employment in a Federal, State or locally funded temporary job designed to assist in clean-up or other activities to enable the community to recover from the effects of the major disaster is not employment that renders the individual ineligible for further DUA once the temporary job ends. Such temporary employment is not considered to be a return to suitable employment.