

## UCFE INSTRUCTIONS FOR STATE AGENCIES

### Chapter IX – OVERPAYMENT

#### 1. Prevention and Detection of UCFE Overpayment.

The SWA is responsible for taking necessary measures to ensure that UCFE benefits are paid only to those individuals who meet all necessary requirements. The SWA should employ the same methods used for State UC claims to prevent and detect possible violations of State and Federal law, specifically 18 U.S.C. 1919.

a. **Postaudits.** If a SWA's procedure provides for postaudits of State UC claims, the SWA will include UCFE claims in such postaudits to the same extent as it does for State UC claims.

b. **Special Controls.** The FCCC is responsible for detecting duplicate filing of UCFE claims "first claims," especially those filed in more than one State.

State agencies will establish and maintain controls to detect duplicate filing of UCFE claims on an intrastate basis (and, insofar as possible, interstate basis) and to prevent the concurrent filing of State UC and UCFE/UCX claims. Duplicate filing may often be prevented by good interviewing techniques.

#### 2. Liability to Repay.

As provided in 5 U.S.C. 8507, if it is determined that a person received an overpayment of UCFE benefits as a result of fraud, he/she will be required to repay the amount of such overpayment in accordance with State law. Such determinations are subject to the same appeal and review that the State law provides for other types of determinations.

#### 3. Recoupment.

An overpayment of UCFE benefits resulting from fraud may be deducted from any future UCFE benefits payable during the 2-year period following the date on which the fraud was determined. No deductions may be made after the 2-year period ends. Claimants are liable to repay any overpayment not recovered by offset.

UCFE benefits may be used to offset overpayments (fraudulent or nonfraudulent) in both Federal and State programs. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272, Section 12401, amended Sections 303(a)(5) of the Social Security Act (SSA), and Sections 3304(a)(4), and 3306(f), FUTA, and added subsection (g) to Section 303, SSA. These amendments authorize States to enact legislation permitting

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the use of benefits payable under any State program to offset overpayments outstanding in any other State. Additionally, it allows reciprocal withholding of overpaid unemployment benefits regardless of the funding source, Federal or State. To offset cross-program between Federal and State funded benefit programs, the state must sign a reciprocal agreement with the Secretary of Labor. To offset cross-program on an interstate basis, both the requesting and recovering State must have signed a reciprocal agreement with the Secretary. The procedures for handling interstate overpayment recoveries, State or Federal, have been developed and can be found in Section IX of ET Handbook No. 392, Interstate Benefit Payment Control Procedures.

a. **Waiver of Recovery.** Any provision of State law authorizing waiver of recovery of nonfraud overpayment of UC, shall be applicable to UCFE. No waiver of recovery is permitted if the overpayment was due to fraud.

### 4. **Administrative Disqualifications.**

An individual who obtains UCFE benefits as a result of fraud is subject to the administrative disqualification provided in the State law. The SWA should take necessary action to determine whether or not a person will be disqualified. If State law or regulation requires due notice and a hearing before an administrative disqualification is imposed, this practice will be used for UCFE claimants. Facts which support a determination to impose an administrative disqualification may not be enough to support a criminal prosecution. Therefore, a failure to convict criminally would not bar an administrative disqualification on the same set of facts.

### 5. **Criminal Offense.**

Under the Federal Criminal Code (18 U.S.C. 1919), an individual who makes a false statement of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, to obtain or increase for himself/herself, or for any other person, a UCFE payment, may be fined not more than \$1,000 or imprisoned for not more than one year, or both. The statement or representation must have been false. The claimant must have known it was false. It must have been material to his/her claim, and it must have been made for the purpose of obtaining or increasing for himself/herself or someone else a payment under the Federal UCFE law (5 U.S.C. 8507). If the case is failure to disclose, the failure must have been of a material fact and the person who failed to disclose such fact knew that the failure would obtain or increase a benefit for himself/herself or someone else.

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a. **Preparation of Case.** When a SWA has enough facts for a prima facie case under the Federal Criminal Code (18 U.S.C. 1919), or 5 U.S.C. 8507, it will develop the factual information, such as list of witnesses and an abstract of the evidence each will present, copies of applications, certificates, statements or affidavits in which false allegations of material facts are made, copies of payrolls, samples of signatures, and any other evidence. The SWA is not to confront a claimant with the evidence collected or try to obtain a confession. The amount of overpayment, if any, and copies of checks, warrants, or cash receipts received by the person, will be shown.

b. **Decision on Appropriate Action.** Consistent with the ETA/OIG Memorandum of Understanding on this subject, and based on the material compiled, the SWA will decide whether criminal action should be undertaken in Federal courts or in State courts. If prosecution in the Federal courts is appropriate, the matter will be referred to the appropriate office of the Regional Inspector General for Investigations (RIGI/CSSI), DOL (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 SWA in State/local courts in accordance with State law and practice.

### **6. Arrangements with the Department of Justice (DOJ) and the Office of the Inspector General (DOL) (OIG).**

a. **Referral to OIG.** The DOJ and the Federal Bureau of Investigation (FBI) have agreed with the DOL that the authority to investigate criminal fraud matters arising from and pertaining to UC programs shall be vested in the OIG. See Memorandum of Understanding (MOU), FBI and OIG (October 14, 1983); DOJ letter (February 15, 1984) from Stephen S. Trott (Assistant Attorney General-Criminal Division) to Francis X. Lilly (Deputy Solicitor of Labor).

Fraudulent claims for UCFE will be referred to the appropriate RIGI or the Chief of the Security and Special Investigations Branch (CSSI) if they meet any one or more of the following three criteria:

- (1) If the established fraudulent overpayment exceeds \$1,000; or
- (2) If the established fraudulent overpayment (regardless of amount) involves the use of a false governmental identification document, such as an SF-50

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or Form ES-931, to claim entitlement for UCFE benefits (violation of 18 U.S.C. 1028); or

(3) If there are other factors concerning the fraudulent overpayment which, in the judgement of the SWA 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).

**NOTE:** To meet the criteria for referral to the OIG in Section 6.a. (1), above, the payments for the weeks in which the fraud actually occurred must exceed \$1,000. For example, if a claimant knowingly failed to report wages for 3 weeks, which resulted in his/her fraudulently obtaining \$300 in UCFE benefits, such case would not be referred to the OIG, even if the total overpayment established by the SWA amounted to \$1,800 because of the imposition of an administrative penalty which increases the amount of actual overpayment by \$1,500. Generally, such penalty payments arise from provisions of State law which provide for retroactive determinations based on the dates(s) that fraud was committed rather than the date the overpayment was discovered.

When a SWA 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 (Section 6.a. (2)), the correspondence should indicate the specific document used (i.e., SF-50, ES-931, etc.). If the case involves "other factors" (Section 6.a. (3)), show the specific reason in the transmittal (i.e., the offense is considered as 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 SWA to the appropriate RIGI/CSSI on a memorandum, State report form, or DOL Incident Report, Form DL 1-156 (a copy of which will also be sent to the appropriate ETA Regional Administrator). 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 Section 6.a. above), the type of UC program involved as well as the monetary loss (i.e., UCFE -\$1,500), and any relevant facts already developed by the SWA.

The following types of information should also be attached to the

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narrative summary that is sent to the RIGI/CSSI: copies of applications)/claim(s) for benefits; copies of the claimant's statement/affidavit; copies of the employer reports/payroll information, copies of checks or warrants, SWA determination notices and appeal decisions, if applicable; samples of signatures and any other evidence the SWA has in its possession that has a bearing on the facts in the case.

Within 5 days, the RIGI/CSSI will acknowledge, to the SWA (with a copy to the ETA Regional Administrator), in writing, its acceptance of the case for further investigation prior to referral to the appropriate U.S. Attorney for prosecutive action. Those cases referred to but not accepted by the OIG will be returned to the SWA. The RIGI/CSSI will also notify the ETA Regional Administrator of such cases where no action will be taken. Upon return of these cases, the SWA should consider appropriate prosecutive action 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 SWA advised on a confidential basis on the status of the case. On fraud cases referred to the OIG for investigation, the SWA 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 SWA on the outcome of the case with a copy to the ETA Regional Administrator. If the referral criteria contained in Section 6.a. above should be changed within a jurisdiction (State/region) due to the workload, the known attitude of prosecutors, or the adequacy of SWA obtained prosecutions, the Assistant Inspector General for Investigations and the Administrator, Office of Program Fiscal Integrity, ETA, will authorize revisions to the referral criteria. Generally, the OIG policy will be to avoid unnecessary referral cases which will not be investigated. The appropriate ETA Regional Administrator will be notified, in writing, of referral criteria revisions by the Director, Unemployment Insurance Service, ETA, through the Office of Regional Management.

### 7. Records of Cases Referred to the OIG.

A record of each case referred to the OIG will be maintained by the SWA, showing the dates and the documents referred. This record may be abbreviated if duplicate copies of all documents referred are retained by SWA. Final disposition, such as fine or imprisonment, dismissal, or nonprosecution, is to be recorded. The amount of UCFE, or UCFE-UCX overpayment established to the claimant's account and subsequent recoveries, as well as

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collection efforts (if appropriate), are to be posted to the claimant's record by the SWA.

8. **Prosecution in State Courts.**

a. **Cases That Do Not Meet the Criteria for Referral to the OIG.** Any case that does not meet such criteria will be referred for prosecution in a State court if it meets the criteria for prosecution of cases of fraudulent claiming of State UC benefits. Upon request of a SWA, the RIGI/CSSI will assist SWA investigative units in other claimant fraud inquiries on a case-by-case basis. The nature of the assistance will depend on local circumstances and will be decided by RIGI/CSSI and the SWA with the knowledge of the ETA Regional Administrator.

b. **Prosecution Declined by U.S. Attorney.** If the U.S. Attorney declines to prosecute a case under the referral procedure outlined above, the SWA should refer the case for prosecution in a State court if it meets the criteria for prosecution of cases of fraudulent claiming of State UC benefits.

9. **Establishment of Overpayment.**

Whether prosecution is by Federal or State authorities, the SWA will establish an overpayment according to State law.

10. **UCFE Overpayment Not Involving Fraud.**

When an overpayment of UCFE benefits involves no fraud, a SWA will determine, under its State law, whether:

- a. Recovery of the overpayment will be waived;
- b. The claimant will receive any future UCFE benefits if the overpayment has not been repaid; or
- c. The claimant will be permitted to offset any future UCFE benefits payable under Federal law.

This matter is covered in the Federal UCFE regulations (20 CFR 609.11(c)). The above procedure allows a SWA, if permitted under its State law, to pay a UCFE claimant part of his/her weekly benefit amount, offsetting the remainder against a determined amount in order to reduce the balance of the outstanding overpayment. For example, if the claimant's weekly benefit amount equals \$100 and his/her nonfraudulent overpayment is \$180, he/she could be paid \$50 for each week of total unemployment, the \$50 reducing the overpayment accordingly (i.e., from \$180 to \$130).

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after the first week), if this procedure is authorized under the State law.

11. **Collection of UCFE Overpayment - Fraudulent and Nonfraudulent.**

a. SWA must observe the following minimum requirements in collecting an overpayment of UCFE benefits:

(1) In an overpayment case involving fraud, if an agreement for repayment has been obtained by the U.S. Attorney or a State attorney, or, in a case of court ordered repayment, and the debtor fails to repay as agreed or ordered, the SWA will notify the U.S. Attorney, the State attorney, or the court, as appropriate.

(2) Except as provided in this Chapter, the SWA should seek to recover all overpayment through a comprehensive, vigorous, and uniformly applied collection program that is at least equal to its collection under the State law. The program for collecting a UCFE overpayment must include all debt collection procedures reasonably available to the SWA, such as (but not limited to):

(a) Timely and aggressive demands for repayment, embodying adequate description of the overpayment;

(b) Efforts to locate the debtor by communicating with past employers; by examining wage records, when available; by personal visit to debtor's last known address; and by inquiry among his/her former associates and relatives;

(c) Collections by offset when possible in accordance with this Chapter;

(i) By civil suit, as authorized by State law; and

(ii) When the debtor is adjudicated bankrupt, the filing of a proof of claim with the appropriate administrative authority or court.

(d) The SWA will establish and observe realistic points of diminishing returns beyond which further collection efforts by the SWA are not justified or beyond which collection efforts may be limited. In establishing points of diminishing returns, the SWA will consider estimated or actual recovery rates in relation to:

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- (i) Costs of different types of action;
- (ii) Size of the debt; and
- (iii) the possibility of collection through the agency's efforts and by other means.

### 12. Write-off of UCFE Overpayment--Fraudulent and Nonfraudulent.

After following required collection procedures and having reached a point of diminishing returns, a SWA may determine that a debt is uncollectible and remove the amount of the uncollectible overpayment from its accounts:

- a. When a debtor has no resources and is arrested for a felony or is permanently incapacitated for work, physically or mentally;
- b. When a debtor dies and there is positive evidence showing the debtor left no estate;
- c. When a debtor is adjudged bankrupt or was discharged in bankruptcy, and the amount due as listed in the schedule of debts or proof of claim was duly filed in the bankruptcy proceedings, regardless of the amount;
- d. When an overpayment amounts to \$25 or less and was on the SWA's records for at least 1 year; or
- e. When an overpayment amounts to more than \$25 and has been on SWA's records for at least 3 years.

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 SWA are required, the SWA should keep an administrative record (including a "stop" order or "flag") during the next 3-year period to provide for possible collection through offset (limited to the 2 year period following the date that the fraud was determined) or by other methods until appropriate disposition of the records according to Sections 9190-9194, Part V of the ES Manual.

### 13. Recovered UCFE Funds.

Any amount recovered by a SWA in a UCFE overpayment will be deposited in the account from which payment was made, and reported on the UCFE transactions report.



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### 14. Interest on UCFE overpayment.

The collection of interest on UCFE overpayment balances is not only permissible, but required by statute if the State imposes an interest charge on overpayment balances under the regular State program. In addition, the interest collected cannot be retained by the SWA but must be paid into the fund from which the benefits were paid together with the principal recovered.

**However, benefit offset can only be used to collect the overpayment principal. It cannot be used to reduce the interest liability of the claimant.**

Federal law (5 U.S.C. 8502(b)) requires equal treatment of claimants under the UCFE program. Under the equal treatment rule, if a SWA imposes on claimants an interest charge on overpayment balances under the regular State unemployment compensation program, the charge must be imposed on overpayment balances due under the UCFE program (20 CFR 609.11(f)). Federal law requires no minimum or "Standard" interest rate. Therefore, whatever interest rate applies to regular State unemployment insurance, also applies to UCFE program funds.

Under the applicable Federal statutes and regulations, a State is not authorized to retain the interest collected on a UCFE program overpayment. In the UCFE program, an overpayment that results from a knowing misrepresentation or failure to disclose material facts, must be repaid. 5 U.S.C. Section 8507(b)(1) provides that "(a)n amount repaid" under subsection (a) shall be "deposited in the fund from which payment was made, if the repayment was to a SWA." (Emphasis added). See, also 20 CFR 609.11(j) (1). The term "an amount repaid" includes both the overpayment principal recovered and any interest charge assessed. **Therefore, both the principal and the interest charge must be deposited in the account from which the payment was made.**

Retention of interest by the State as it applies to UCFE overpayment is also invalid because it would amount to an unauthorized appropriation of Federal property. Although authority for assessment of an interest charge is vested in State law, the imposition of the charge does not entitle the State to assume ownership of the interest. Interest on interpleaded or deposited private property funds generally follows the principal and is a protected property right that may not be appropriated by the State without just compensation. Therefore, if the State retains interest on Federal funds, it essentially appropriates Federal property.

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### 15. Records of UCFE Overpayment—Fraudulent and Nonfraudulent.

Accounting records, specifically identified by program will be kept for UCFE overpayments. Among other things, records of UCFE overpayments will contain the reason for overpayment and will show, separately, overpayments resulting from fraud. Records of UCFE overpayments will show, in each case, the amount of the overpayment, the action taken by the SWA to collect the overpayment, the results of the SWA's collection activities, the dates and amounts of repayment or amount recovered by offset, and the current overpayment balance, if any.

The basis for the SWA's determination that a debt is uncollectible will be included in the overpayment files if the amount of the overpayment has been removed from the accounts. The records will be transferred to SWA accountability for disposal, under provisions of State law, 3 years after the date of write-off.