



## **Farmers' Guide to Disaster Unemployment Assistance (DUA)**

### **Farmers' Legal Action Group, Inc. (FLAG)<sup>1</sup>**

#### **I. Introduction**

Disaster Unemployment Assistance (DUA) provides assistance to people who normally would not qualify for unemployment benefits. This includes farmers. Funded by the Federal Emergency Management Administration (FEMA), the DUA program is administered by each state's department of labor.<sup>2</sup>

This Farmer's Guide to Disaster Unemployment Assistance is current through September 5, 2017. Support for this work was provided by Farm Aid. It is based on federal regulations that control the program.

#### **II. DUA Deadline**

An application for DUA must be filed with the state within thirty days of the official announcement date of the disaster.<sup>3</sup>

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<sup>1</sup> Many at Farmers' Legal Action Group, Inc. (FLAG) over the years have contributed to versions of materials for farmers hoping to use Disaster Unemployment Assistance (DUA) during a disaster. This edition was updated by Stephen Carpenter, and edited by Wendy Reid. Support for this work was provided by Farm Aid.

<sup>2</sup> DUA is authorized by 42 U.S.C. § 5177.

<sup>3</sup> 20 C.F.R. § 625.8(a). If the 30th day falls on a Saturday, Sunday, or legal holiday in the area, the 30-day time limit is extended to the next business day.

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Farmers' Legal Action Group, Inc. (FLAG) is a nonprofit law center dedicated to providing legal services and support to family farmers and their communities in order to help keep family farmers on the land.

6 West 5th Street, Suite 650, St. Paul, MN 55102-1404 | 651-223-5400 | [www.flaginc.org](http://www.flaginc.org)

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If the applicant can show good cause for filing late, however, the state must accept the application.<sup>4</sup> FEMA regulations do not define what is meant by good cause. FEMA's determination of whether there was good cause for filing an application late is appealable. Appeals are discussed below.

### **III. Farmers Are Eligible for DUA**

Although we do not normally think of farmers as “unemployed,” DUA covers farmers affected by a disaster. Farmers qualify under the awkward term of “unemployed self-employed,” which is explained below. In addition, some farmers with significant income from off farm work can qualify for DUA based on their off-farm work. The rules for determining this requirement vary depending on whether the person is employed or self-employed. The following sections discuss DUA eligibility in detail.

#### **A. Must be Employed or Self-Employed Before the Disaster**

To qualify for DUA, a person must either be an unemployed worker or an unemployed self-employed individual—which can include farmers. Before the disaster, therefore, applicants need either to have been employed or self-employed, or about to be employed or self-employed.

##### **1. Self-Employed Individual – Including Farmers**

To be eligible for DUA as a self-employed individual, the person must have been self-employed, or have been about to be self-employed, in the disaster area at the time of the disaster.<sup>5</sup> Federal regulations are clear on the point that self-employment, for the purposes of DUA, includes farming.<sup>6</sup>

The person who applies must have a “primary reliance for income” on the self-employment, and the person must depend on the self-employment as the “principal source of income and livelihood.”<sup>7</sup>

##### **2. Employed Worker**

In order to be eligible for DUA as an employed person, the applicant must have been employed or about to begin employment in the disaster area at the time of the disaster. The job must have provided, or was about to provide, the principal source of the applicant's income and livelihood.<sup>8</sup>

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<sup>4</sup> 20 C.F.R. § 625.8(a). The application cannot be accepted if it is filed after the expiration of the Disaster Assistance Period, which is usually 26 weeks. 20 C.F.R. §§ 625.2(f), 625.8(a).

<sup>5</sup> 20 C.F.R. §§ 625.2(n), 625.4(c).

<sup>6</sup> 20 C.F.R. § 625.2(n).

<sup>7</sup> 20 C.F.R. § 625.2(t), (n).

<sup>8</sup> 20 C.F.R. § 625.2(s).

## **B. Must be Unemployed Because of the Disaster**

In order to be eligible for DUA, the applicant must have been made unemployed by the disaster. FEMA has detailed and somewhat confusing regulations for this part of the eligibility requirements.

### **1. Unemployed Self-Employed Individual**

In order to be considered an unemployed self-employed individual, the applicant must meet one of the following conditions.

#### **a. Week of Unemployment Caused by the Disaster**

An unemployed self-employed individual must have what FEMA regulations call a “week of unemployment” following the disaster, and the unemployment must be a direct result of the disaster.<sup>9</sup>

In general, continued eligibility for DUA is determined week by week. A person can have a week of unemployment even if he or she was able to work for a part of the week.<sup>10</sup> In addition, if the applicant works off the farm a few hours for a wage or salary, he or she may still qualify for DUA.

#### **b. Unable to Reach Work**

A person qualifies as an unemployed self-employed individual if he or she is unable to reach work as a direct result of the disaster. This provision applies even if the applicant was about to begin self-employed work and could not reach the work site.<sup>11</sup>

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<sup>9</sup> 20 C.F.R. §§ 625.2(w)(2), 625.5(b).

<sup>10</sup> 20 C.F.R. § 625.2(w)(2). A week of unemployment is a week in which the person is totally, part-totally, or partially unemployed during the week. A week of total unemployment is a week in which the person performs no services in self-employment or in an employer-employee relationship, or performs services less than full-time and earns wages not more than an amount set by the state. A week of part-total unemployment is a week of otherwise total unemployment in which the individual has odd jobs or other work and earns wages not more than an amount set by state law. A week of partial unemployment is a week during which the individual performs less than the customary full-time services in self-employment, as a direct result of the disaster, and earns wages not more than an amount set by the state, or a week during which the only activities or services performed are for the sole purpose of enabling the individual to resume self-employment. If the week of unemployment is a week in which the person is reemployed or begins self-employment again, the week qualifies as a week of partial employment.

<sup>11</sup> 20 C.F.R. § 625.5(b)(3).

### **c. Injury**

A self-employed person who is injured as a direct result of the disaster and cannot work qualifies as an unemployed self-employed individual.<sup>12</sup>

## **2. Unemployed Worker**

An applicant qualifies as an unemployed worker if the unemployment is caused by the disaster. For the purposes of DUA, unemployment is caused by the disaster if one of the following is true.

### **a. Week of Unemployment**

The applicant must have what FEMA regulations call a “week of unemployment” that is caused directly by the disaster.<sup>13</sup> Applicants do not need to have been unemployed for the whole week to have a week of unemployment.<sup>14</sup> In general, DUA eligibility is determined week by week.

### **b. Unable to Reach Workplace**

Unemployed workers are eligible for DUA if they are unable to reach work as a direct result of the disaster.<sup>15</sup> This provision applies even if the applicant was about to begin working and could not reach work.

### **c. Injury**

Applicants qualify for DUA if they cannot work because of an injury caused as a direct result of the disaster.<sup>16</sup>

### **d. New Breadwinners**

Applicants qualify for DUA if they have become the breadwinner or major supporter for the household because the head of household has died as a direct result of the disaster.<sup>17</sup>

## **C. File DUA Applications**

Applicants must file an initial application for DUA. They may also need to file additional applications for additional weeks of unemployment.<sup>18</sup>

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<sup>12</sup> 20 C.F.R. § 625.5(b)(4).

<sup>13</sup> 20 C.F.R. § 625.5(a)(1).

<sup>14</sup> 20 C.F.R. § 625.2(w)(1). See note 10 for a detailed definition of “week of unemployment.”

<sup>15</sup> 20 C.F.R. § 625.5(a)(2)-(3).

<sup>16</sup> 20 C.F.R. § 625.5(a)(5).

<sup>17</sup> 20 C.F.R. § 625.5(a)(4).

<sup>18</sup> 20 C.F.R. § 625.4(e).

#### **D. Able and Available to Work**

DUA recipients must be able and available to work.<sup>19</sup> The laws of each state define the meaning of this requirement. Applicants are still eligible for the program if they suffered a disaster-caused injury that prevents them from working.<sup>20</sup>

#### **E. Have Not Refused to Work**

Applicants must not have refused a bona fide offer of employment in a suitable position and must not have refused without good cause to resume or begin suitable self-employment.<sup>21</sup>

#### **F. Not Eligible for Other Compensation**

In general, DUA applicants must not be eligible for other forms of unemployment compensation.<sup>22</sup>

### **IV. DUA Benefits**

FEMA regulations controlling the calculation of DUA benefits can be confusing. In addition, the benefits vary according to the way each state calculates its own regular unemployment benefits. As a result, DUA benefits vary somewhat from state to state.

#### **A. States Must Meet Minimum DUA Requirements**

States must follow the minimum federal DUA regulations, even if they are inconsistent with the state's normal practice.

For example, if the state does not usually give unemployment benefits to the self-employed, in the case of DUA the state must treat self-employment "in the same manner and with the same effect as covered employment and wages."<sup>23</sup>

#### **B. Calculating DUA Benefits—Based on Past Income**

Since state unemployment laws are not written with farmers in mind, the state's formula for figuring benefits may be complicated and seem unrealistic. A central factor in calculating most state unemployment benefits, for example, is past income. In general, the more a person earned before the disaster, the more he or she will receive as a DUA benefit. In some cases, state calculations would leave many farmers with no DUA benefits at all.

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<sup>19</sup> 20 C.F.R. § 625.4(g).

<sup>20</sup> 20 C.F.R. § 625.5(a)(5), (b)(4).

<sup>21</sup> 20 C.F.R. § 625.4(h).

<sup>22</sup> 20 C.F.R. § 625.4(i). See 20 C.F.R. § 625.2(d) for a discussion of the types of relevant compensation.

<sup>23</sup> 20 C.F.R. § 625.6(a)(1)-(2).

Federal regulations require the state to do three things that help the situation somewhat.

First, the DUA calculation for the unemployed self-employed must be based on the person's most recent tax year that ended before the disaster.<sup>24</sup> Some states normally use a much shorter period, which could show that a farmer had no income at all. If the applicant has not filed taxes for that year, the income will be based on the applicant's statements.<sup>25</sup>

Second, federal regulations say that, at a minimum, everyone who qualifies for DUA as unemployed self-employed due to the disaster—including farmers—should receive at least 50 percent of the state's average weekly payment of regular unemployment.<sup>26</sup> Thus, even if a farmer had a negative income in the previous year, he or she can still be eligible for DUA.

Third, federal regulations provide that each adult member of a family that is self-employed as a family unit in the same business can qualify for DUA benefits based on an allocation of the total net income from the self-employment business.<sup>27</sup>

### **C. Reductions in DUA Benefits**

If a person was self-employed less than full-time before the disaster, DUA benefits may be reduced based on the percentage of the person's time that is customarily not spent working at the self-employment.<sup>28</sup> In addition, benefits are reduced by any other wages or income earned during the disaster.<sup>29</sup>

### **D. Immediate Determination of Benefits**

An immediate determination of DUA benefits will be based on the applicant's statement of income or a combination of a statement, documentation, and other records. If the determination is based on the person's statement alone, he or she must provide evidence of employment or self-employment within twenty-one days.<sup>30</sup>

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<sup>24</sup> The calculation is based on net income, and the income generally is divided among adult family members in the same business. 20 C.F.R. §§ 625.6(a)(2), 625.2(u).

<sup>25</sup> 20 C.F.R. § 625.6(e).

<sup>26</sup> 20 C.F.R. § 625.6(b).

<sup>27</sup> 20 C.F.R. § 625.6(a)(3). In some cases, family members under the age of majority who work on the farm may qualify as either employed or self-employed. If so, their benefits are determined based on their actual wages or income rather than an equal allocation of the family's income.

<sup>28</sup> 20 C.F.R. § 625.6(b)(1).

<sup>29</sup> 20 C.F.R. § 625.6(f)(1). If the person's other pre-disaster employment results in a higher DUA benefit, the higher benefit may be taken.

<sup>30</sup> 20 C.F.R. § 625.6(e)(1).

## V. DUA Appeals

Any decision regarding initial eligibility for DUA, continued DUA eligibility, or the level of DUA benefits may be appealed.<sup>31</sup>

### A. Deadline—60 Days to File

A DUA appeal must be filed within sixty days after the state’s decision is issued or mailed.<sup>32</sup>

### B. Stages of Appeal

There are three stages of a DUA appeal.

#### 1. First Stage

In the first stage of a DUA appeal, the appeals process for the state’s regular unemployment compensation program is used.<sup>33</sup> Any decision on the appeal must be made within thirty days.<sup>34</sup> The notice of decision, along with the reasons for the decision, must be given to the applicant.<sup>35</sup> The notice of decision should provide information about how to seek a second-stage appeal.<sup>36</sup>

#### 2. Second Stage

In the second stage of DUA appeals, the appeal is made to the Regional Administrator of the United States Department of Labor’s Employment and Training Administration.<sup>37</sup> This second-stage appeal must be filed within fifteen days after the first-stage decision was mailed or delivered to the person who appealed. This appeal may be filed with the state agency, which will forward the request to the Regional Administrator, or with the Regional Administrator directly.<sup>38</sup> The Regional Administrator must make a decision within forty-five days after the second-stage appeal was filed or within ninety days after the first stage appeal was filed, whichever is earlier.<sup>39</sup>

#### 3. Third Stage

A second-stage appeal decision is final unless the Assistant Secretary of Labor for Employment and Training decides to review the case.<sup>40</sup> The Assistant Secretary’s review is the third stage of a

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<sup>31</sup> 20 C.F.R. §§ 625.9, 625.10(a)(1).

<sup>32</sup> 20 C.F.R. § 625.10(a)(1).

<sup>33</sup> 20 C.F.R. § 625.10(a)(1).

<sup>34</sup> 20 C.F.R. § 625.10(a)(1).

<sup>35</sup> 20 C.F.R. § 625.10(a)(2).

<sup>36</sup> 20 C.F.R. § 625.10(a)(2).

<sup>37</sup> 20 C.F.R. § 625.10(c).

<sup>38</sup> 20 C.F.R. § 625.10(c)(2), (3)(i).

<sup>39</sup> 20 C.F.R. § 625.10(c)(4).

<sup>40</sup> 20 C.F.R. § 625.10(c)(5), (d).

DUA appeal. Review by the Assistant Secretary is based solely on a written record. The person who appealed has fifteen days from the time the Assistant Secretary mails notice that the appeal will be heard to present his or her own written arguments.<sup>41</sup> The decision of the Assistant Secretary is final.<sup>42</sup>

## **VI. Discrimination is Illegal**

All FEMA relief is to be administered in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, or economic status.<sup>43</sup>

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<sup>41</sup> 20 C.F.R. § 625.10(d)(4). The Regional Administrator and the state agency must submit all written records to the Assistant Secretary when the Assistant Secretary decides to conduct a review. The Assistant Secretary may request other written evidence or contentions.

<sup>42</sup> 20 C.F.R. § 625.10(d)(7).

<sup>43</sup> 42 U.S.C. § 5151; FEMA, Disaster Unemployment Fact Sheet, <https://www.fema.gov/media-library/assets/documents/24418>