

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 The Texas Workforce Commission (Commission) proposes amendments to the following section
8 of Chapter 815, relating to Unemployment Insurance:

9
10 Subchapter B. Benefits, Claims and Appeals, §815.18

11
12 The Commission proposes the following new subchapter to Chapter 815 relating to
13 Unemployment Insurance:

14
15 Subchapter E. Confidentiality and Disclosure of State Unemployment Compensation
16 Information, §§815.161 - 815.168

- 17
18 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
19 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
20 PART III. IMPACT STATEMENTS
21 PART IV. COORDINATION ACTIVITIES

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24
25 The purpose of the proposed Chapter 815 rules change is to:

26
27 --comply with final rules setting forth the statutory confidentiality and disclosure requirements of
28 Title III of the Social Security Act (SSA) and the Federal Unemployment Tax Act
29 (FUTA) concerning unemployment compensation (UC) information issued by the U.S.
30 Department of Labor (DOL) on September 27, 2006, in 20 Code of Federal Regulations
31 (C.F.R.) Part 603; and

32
33 --implement House Bill (HB) 2120 and Senate Bill (SB) 1619, enacted by the 80th Texas
34 Legislature, Regular Session (2007), which address certain federal requirements, as
35 enumerated in 20 C.F.R. Part 603.

36
37 The federal rules relating to confidentiality of UC information require state law to:

- 38 --contain provisions that are interpreted and applied consistent with federal definitions of
39 "identifying information";
40 --provide penalties for disclosure of confidential UC information; and
41 --define "public domain information" to clarify how such information is held in Texas.

42
43 By amending Texas Labor Code §301.081 and adding new §301.085, HB 2120 and SB 1619:

- 44 --mirror the federal interpretation of identifying information under 20 C.F.R. §603.4;
45 --make unauthorized disclosure of such information a Class A misdemeanor; and

1 --establish that UC information is not public information for purposes of Chapter 552, Texas
2 Government Code, thereby making UC information not subject to the Texas Public
3 Information Act.

4
5 Federal regulations authorize states to implement specific details and to adopt state law with
6 more stringent confidentiality provisions than those imposed by the final regulations. HB 2120
7 and SB 1619 direct the Commission to adopt rules regarding confidentiality of UC information.
8

9 The federal regulations generally provide that all employment and/or wage information is
10 confidential and must not be disclosed. However, because sharing UC information is necessary
11 for the proper administration of the UC program, disclosure to certain entities has been deemed
12 mandatory. These entities include claimants and employers, the Internal Revenue Service (for
13 purposes of UC tax administration), and U.S. Citizenship and Immigration Services (for
14 purposes of identifying a claimant's immigration status). In addition, federal UC law also
15 requires disclosure of state UC information to certain federal UC and benefits programs. SSA
16 also requires disclosure of specific information to various specified state and federal agencies in
17 administration of the agencies' programs. The confidentiality and disclosure requirements in
18 SSA Title III relating to UC information are conditions for receipt of grants by the states for UC
19 administration. The disclosure requirements in FUTA are conditions required of a state in order
20 for employers in that state to receive credit against the federal unemployment tax under
21 26 United States Code §3302.
22

23 There are certain circumstances under which otherwise confidential UC information can be
24 disclosed, but only if such disclosure is authorized by state law and does not interfere with
25 the efficient administration of the state's UC program. Federal regulations specifically
26 provide that the confidentiality requirement of 20 C.F.R. §603.4 does not apply to public
27 domain information as that term is defined at §603.2(c). The federal regulations allow for
28 disclosure of UC information only if state law provides sufficient protections regarding the
29 payment of costs, safeguards, and data-sharing agreements. For example, provided sufficient
30 protections are in place, states are permitted to disclose UC information:

- 31 --to public officials in the performance of their duties;
 - 32 --to agents or contractors of public officials; or
 - 33 --on the basis of informed consent.
- 34

35 Notwithstanding the general rule that all UC information is confidential and barred from
36 disclosure, federal regulations make disclosure mandatory to a number of entities--primarily
37 governmental--beyond the obvious claimants and employers, because it is either necessary for
38 the proper administration of the UC program or SSA mandates that certain specified information
39 be disclosed to these other entities. Beyond these mandatory disclosures, states have significant
40 latitude above the federal floor and may have more stringent confidentiality provisions than
41 imposed by federal regulations.
42

43 Several factors are key in weighing options related to disclosure of this information. As DOL
44 notes in the regulations' preamble, "Confidentiality is necessary to avoid deterring individuals
45 from claiming benefits or exercising their rights, to encourage employers to provide information

1 necessary for program operations, to avoid interference with the administration of the UC
2 program, and to avoid notoriety for the program if program information were misused."
3

4 Historically, the Agency's practices have provided the greatest level of confidentiality to UC
5 information in order to ensure a fair system in which all parties are willing and able to
6 participate. Retaining policies that reflect this conservative approach ensures consistency with
7 federal regulations. Without reasonable and effective confidentiality of this information, a
8 chilling effect may result at all stages of UC proceedings if participants believe the Agency
9 cannot effectively maintain as confidential the often highly personal information divulged.
10 Accordingly, maintaining the status quo retains the guiding principles of federal law, including
11 treating all appeals records as confidential.
12

13 Another increasingly important factor in deciding how to treat confidential UC information is the
14 potential for identity theft and the considerable harm (financial and otherwise) the release of such
15 information could cause UC program participants. In deciding what type of UC information to
16 release, the Commission has weighed these benefits and risks, including:
17

- 18 --public access to open administrative hearings and related information;
- 19 --chilling effect on individuals and employers exercising appeal rights under UC law;
- 20 --staff time and costs necessary to redact the requested records given the broad definition of
21 "identifying information";
- 22 --significant risk of inadvertent errors in redaction; and
- 23 --potential for identity theft if UC records are released.

24
25 In recognition of these factors, and consistent with current practices, the Commission has
26 determined that only UC information considered public domain or otherwise expressly exempted
27 may be released.
28

29 Public domain information is generally considered exempt from the UC confidentiality
30 requirements. The final federal rules offer states some flexibility in defining the term public
31 domain information. According to the federal regulations, public domain information includes:
32 --information about the organization of the state, the state UC Agency, and appellate authorities,
33 including the names and positions of officials and employees;

- 34 --information about the state UC law (and applicable federal law), provisions, rules, regulations,
35 and interpretations thereof, including statements of general policy and interpretations of
36 general applicability; and
- 37 --any agreement, including interstate arrangements and reciprocal agreements and any
38 agreements with DOL related to the administration of the state UC law.

39

40 In the proposed federal rules, the possibility existed that appellate records and decisions could
41 qualify as "statements of general policy" within the definition of public domain information set
42 out in 20 C.F.R. §603.2. The Commission commented on these proposed federal rules,
43 concerned that DOL would interpret these regulations to require a state to treat entire appeals
44 records and decisions as public domain information. Such a practice would be at odds with
45 current policy. The Commission determines certain cases to be of precedential value and
46 includes a digest of each selected case in the Commission Appeals Policy and Precedent Manual.

1 Thereafter, only the de-identified digests of Commission-approved precedents are treated as
2 public domain information, while appeals records and fact-specific decisions are withheld.
3 These digests have traditionally been available to the public and may be accessed on the
4 Agency's Web site at www.texasworkforce.org.

5
6 In 20 C.F.R. §603.2, DOL removed appeals records and decisions from the definition of public
7 domain information, establishing that the public does not necessarily have a right of access to
8 appeals records and decisions, and ensuring that some appeals information such as Social
9 Security numbers remains confidential. In fact, DOL noted in its preamble to the final rules that,
10 "States may keep appellate records confidential even though the rule does not require it." As a
11 result, the Commission has opted to deem entire appellate records as confidential and will
12 continue to release de-identified digests of Commission-approved precedents.

13
14 This practice is supported by provisions of the Texas Government Code and rulings by the Texas
15 Office of the Attorney General (OAG). Under §552.107(1), Texas Government Code, certain
16 legal matters are considered privileged and thus are not subject to disclosure. The case analyses
17 rendered by Commission appeals attorneys in furtherance of professional legal services to the
18 Commission have been protected from disclosure under §552.107(1). Once OAG makes a
19 decision for a governmental body concerning the disclosure of a specific, clearly delineated
20 category of information, that governmental body need not seek future OAG decisions regarding
21 its ability to withhold such information, provided the elements of law, fact, and circumstances on
22 which the decision was based have not changed in subsequent information requests. Such
23 rulings that a governmental body may rely on are known as "previous determinations." Before
24 Texas enacted the law making UC information privileged--not public--for purposes of the Public
25 Information Act, OAG granted the Agency two previous determinations. Both ruled that a
26 confidential case analysis rendered by Commission appeals attorneys in furtherance of
27 professional legal services to the Commission is an exception to disclosure, pursuant to Texas
28 Government Code §552.107(1).

29
30 In these proposed rules, the Commission has chosen to maintain the status quo in Commission
31 operations by:

- 32 --using the definition of public domain information set forth in 20 C.F.R. §603.2(c), as
33 interpreted by the Commission and allowing appropriate Agency organization
34 information, Texas UC law, and any Texas UC administration agreements to be released;
- 35 --continuing the practice of holding entire appeals records and decisions as confidential and not
36 releasable; and
- 37 --continuing the current practice of releasing de-identified Commission-designated precedent
38 case digests as statements of general applicability under the definition of public domain
39 information.

40
41 Disclosure of confidential UC information is permissible under certain exceptions if authorized
42 by state law and if such disclosure does not interfere with the efficient administration of the state
43 UC law. Disclosure to individuals and employers of their own confidential UC information --
44 provided it is for UC purposes--is required under 20 C.F.R. §603.6(a). For example, a claimant's
45 UC information can be released to that particular individual; likewise, employer information can
46 be disclosed to that specific employer. The federal regulations also permit disclosure of such

1 information for non-UC purposes under certain specified circumstances. However, DOL makes
2 clear that these disclosures for non-UC purposes must be subject to cost reimbursement, as grant
3 funds may not be used to pay for such disclosure costs. These proposed rules allow claimants or
4 employers access to their own UC information, even if the request is for non-UC purposes,
5 subject to cost reimbursement, unless such access could conflict with the administration of UC
6 such as releasing a confidential informant's name or attorney-client privileged information. The
7 federal regulations also permit states to disclose confidential UC information, including
8 identifying information, to an employer or claimant's agent, upon presentation of a written
9 release from the particular individual or employer. Or, when a written release is impossible or
10 impracticable to obtain, the agent can present such other form of consent as is permitted under
11 state law.

12
13 Federal rules treat an elected official performing services for a constituent regarding UC matters
14 as the individual's or employer's agent. DOL reasons that when an elected official is acting in
15 response to a constituent's inquiry about a UC matter, such as that individual's UC claim, the
16 elected official is acting on the individual's behalf and thus is effectively the individual's agent in
17 resolving claim-related issues. But because elected officials may receive requests for assistance
18 that do not specifically authorize the disclosure of confidential UC information--even though
19 such disclosure is necessary for the official to adequately respond to the constituent--DOL
20 revised its final rule to permit the elected official to present reasonable evidence of a request for
21 assistance rather than the "written release." Reasonable evidence of a request for assistance
22 might be a letter from the individual or employer requesting assistance or a written record of a
23 telephone request from the individual or employer. DOL explained that in most cases a request
24 for assistance from a U.S. congressman in reviewing a particular claim includes such reasonable
25 evidence and it is unnecessary to request further evidence.

26
27 Attorneys retained in a UC matter to represent an individual or employer are also treated as
28 agents of that individual or employer. Because DOL recognized an attorney has legal and ethical
29 obligations, DOL agreed that an attorney's assertion that he or she has been retained to represent
30 an individual or employer on a UC matter is sufficient to authorize the disclosure of the client's
31 confidential UC information to the attorney.

32
33 As proposed herein, the Commission has chosen to treat confidential UC information as
34 releasable to an agent when informed consent is obtained, including the allowable disclosures to:
35 --elected officials performing constituent services, upon presentation of a written release or
36 reasonable evidence that the individual or employer has authorized such disclosure;
37 --attorneys retained for purposes related to state UC law, if the attorney asserts that he or she is
38 representing the individual or employer; and
39 --other, non-attorney agents, such as an individual's representative or an employer service agent,
40 provided the required consent is obtained.

41
42 Because of the greater potential threat to employer or individual privacy posed by an entity's
43 collection, storage, maintenance, use, and possible misuse of confidential UC information, DOL
44 believes that additional protections, such as a conditional written release, are necessary for these
45 types of third-party disclosures. The federal rules impose certain requirements upon this
46 category of disclosure, including:

- 1 --cost reimbursement;
- 2 --safeguard and security requirements;
- 3 --written, enforceable agreements;
- 4 --imposition of penalties for the misuse of data; and
- 5 --maintenance of systems sufficient to allow an audit.

6
7 The provisions of HB 2120 and SB 1619 impose criminal penalties for the unauthorized use of a
8 claimant's or employer's identifying information, thus meeting a key element of the federal
9 regulations. The Agency obtains written agreements to ensure the information will be kept
10 confidential. These written agreements include provisions for:

- 11 --monitoring contractor usage of UC information (including site visits); and
- 12 --obtaining reimbursement of costs.

13
14 The Agency exchanges information with numerous contractors. Accordingly, certain threshold
15 standards must be met by all third parties to ensure compliance with federal law. At a minimum,
16 the third party must acknowledge that unauthorized release of the UC information could result in
17 the imposition of criminal penalties. But, given the range of potential risks posed by different
18 contractors, safeguarding the release of confidential information will require additional measures
19 above the basic minimum federal standards. However, the Commission also recognizes the
20 important role the Local Workforce Development Boards (Boards) play in administration of
21 workforce programs. Accordingly, to facilitate Boards' oversight and administration of service
22 delivery and eligibility determinations for workforce services, the Commission proposes to
23 permit the release of otherwise confidential employer and claimant information to Texas
24 workforce system contractors and Board contractors for the administration of workforce
25 programs, as appropriate, pursuant to a written agreement containing the safeguards identified in
26 20 C.F.R. §603.9 and §603.10.

27
28 One effective approach--used in the Agency's current monitoring and safeguard agreements--is
29 to perform an individualized risk assessment. Accordingly, these rules establish general
30 categories and parameters to govern the authorized use of UC information, based upon a risk
31 assessment of disclosure by a particular contractor. Likewise, the Agency will continue to draft
32 individual agreements tailored to address such issues as the specific methods of release, the use
33 of the information, and auditing requirements. Such contracting details are developed on an
34 operational level, but will reflect the guiding principles reflected in these proposed rules.

35
36 Contractors of other local, state, or federal public officials may seek access to identifying
37 information. The federal regulations define a public official as "an official, agency, or
38 public entity within the executive branch of federal, state, or local government that has
39 responsibility for administering or enforcing a law, or an elected official in the federal,
40 state, or local government." As long as the use of this information is related to the
41 administration of governmental or legal functions, the Commission will permit access to
42 any contractor of any other local, state, or federal public official. These activities may
43 include research related to the law administered by the public official. However, prior to
44 releasing identifying information to any contractor of any public official, the Agency
45 must:

46

- 1 (1) enter into a written agreement with the public official on whose behalf the agent or
2 contractor will obtain information that holds the public official responsible for ensuring
3 that the agent or contractor complies with the safeguards in 20 C.F.R. §603.9, and
4 provides for termination if the state or state UC agency determines that the entity does
5 not follow the safeguards in the agreement;
6
- 7 (2) ensure that appropriate monitoring, based on a risk assessment analysis that includes
8 performing on-site inspections of the agency, entity, or contractor, is in place to ensure
9 that the requirements of the state's law and the agreement to maintain confidentiality in
10 contract required by 20 C.F.R. §603.10 are met;
11
- 12 (3) recoup the costs required to set up the agreement, provide the information, monitor the use,
13 and investigate breaches of the agreement; and
14
- 15 (4) devote staff time to the above activities within the current full-time equivalent cap of the
16 Agency.
17

18 The Commission proposes to permit release of otherwise confidential employer and
19 claimant information to nonpublic contractors of federal, state, and local entities, but only
20 on an individualized basis. Under the federal regulations, the Commission must ensure
21 that all costs are recovered up front. Accordingly, these rules propose to allow a risk
22 assessment analysis of each contractor's business practices and uses of confidential UC
23 information, to ensure that where release is appropriate, contracts are tailored to each
24 contractor.
25

26 Pursuant to the newly adopted federal regulations, an employer's or individual's agent
27 may access the client's UC information to the same extent as the client, provided the
28 agent first secures written authorization from the employer or individual the agent
29 represents. However, the standards for release are quite different if the requesting entity
30 is a non-agent third party. A non-agent third party lacks written authorization from the
31 employer or individual and typically seeks access to confidential information for business
32 or research purposes.
33

34 DOL's final rules recognize that additional protections are needed for releases to non-
35 agent third parties because of the greater potential threat to employer or individual
36 privacy posed by the entity's collection, storage, maintenance, use, and possible misuse of
37 confidential UC information. In particular, DOL stressed that the purpose specified in
38 the release must be limited to providing a service or benefit to the individual signing the
39 release or to carrying out the administration or evaluation of a public program to which
40 the release pertains; if the release does not meet these requirements, the state may not
41 disclose confidential UC information under this exception to disclosure.
42

43 As noted above, HB 2120 and SB 1619 satisfy the federal criminal penalty requirements
44 for misuse of UC data--under Texas law, unauthorized release of this information is a
45 Class A misdemeanor. However, the Agency must ensure that requestors maintain
46 sufficient systems to allow for audit of disclosed information and to allow the Agency to

1 monitor the use, storage, and destruction of the information. Historically, the Agency has
2 not provided such access because previously state law did not impose any criminal
3 penalties for unauthorized use or release of UC information, and the cost and staff time
4 necessary to ensure the non-agent complied with federal requirements was prohibitive.
5 Although releases to non-agent third parties are subject to the same four safeguards
6 applicable to government contractors, such releases are not statutorily mandated.
7 Accordingly, the Commission has chosen to continue its current practice of allowing non-
8 agent third parties access to confidential UC records only on a strict case-by-case basis,
9 rather than on an ongoing or, in particular, electronic online basis. In each instance, as a
10 comprehensive written agreement is developed, the costs of monitoring compliance and
11 the risks of improper use must be fully evaluated and built into the agreement, as well as
12 recovered in full up front.

13
14 As previously noted, 20 C.F.R. §603.6(a) requires disclosure to individuals and
15 employers of their own confidential UC information, provided such is for UC purposes.
16 Currently, disclosure of confidential UC information to parties is separately required
17 under the terms of the Narciso Gutierrez, et al. vs. TWC (Gutierrez) settlement. On
18 August 13, 1998, a full and final settlement was implemented between the parties. In
19 part, the settlement requires the Commission to provide "relevant separation and
20 timeliness information in the Commission's custody, as a matter of routine, to both parties
21 (the claimant and the employer) with the Notice of Hearing it currently sends out." Thus,
22 prior to the hearing, the Agency must mail to both parties all fact-finding statements
23 relating to the work separation and the appeal. Moreover, the Gutierrez agreement
24 requires the mutual exchange of otherwise confidential information in hearings. The
25 terms of the agreement are contractual, binding upon the Commission, and do not expire.

26
27 Proposing rules to explicitly allow the sharing of confidential identifying UC information
28 addresses a unique challenge concerning release of certain information where the
29 claimant has been a victim of family violence or stalking. Section 207.046(a)(2), Texas
30 Labor Code, provides that a claimant is not disqualified from receiving UC if that
31 individual left the workplace to avoid family violence or stalking, provided certain
32 evidentiary standards are satisfied. Section 207.046(b), Texas Labor Code, provides,
33 "except as provided by law," such evidence may not be disclosed to any person without
34 the affected claimant's consent.

35
36 Arguably, §207.046(b), Texas Labor Code, could be read to prohibit the Agency from
37 meeting Gutierrez requirements because the Agency likely lacks the claimant's consent to
38 provide relevant separation information to both parties in some hearings. Conversely,
39 failure to provide pertinent information to both parties prior to the hearing could hamper
40 administrative process rights if both parties were not fully apprised of the issues
41 prehearing, possibly resulting in inadequately prepared participants. Specifically
42 allowing the sharing of this information with all hearing parties by rule satisfies Gutierrez
43 without violating §207.046(b). Establishing this practice in rule will ensure the
44 disclosure of UC records to a hearing party, meet the terms of the Gutierrez settlement
45 agreement, and avoid any legal challenges related to the release of this information in
46 such circumstances.

1
2
3 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

4 **(Note: Minor editorial changes are made that do not change the meaning of the rules and,**
5 **therefore, are not discussed in the Explanation of Individual Provisions.)**

6
7 **SUBCHAPTER B. BENEFITS, CLAIMS AND APPEALS**

8 The Commission proposes the following amendments to Subchapter B:

9
10 **§815.18. General Rules for Both Appeal Stages**

11 Section 815.18(2) is reorganized as §815.18(2)(A).

12
13 New §815.18(2)(B) states that the Agency shall provide copies of the relevant separation and
14 timeliness information in its custody to both parties with the Notice of Hearing, including:

- 15 (i) all information received from the parties in response to, or in protest of, a claim for
16 unemployment insurance;
17 (ii) all fact-finding statements relating to the work separation; and
18 (iii) the appeal from the determination of the work separation.
19
20

21 **SUBCHAPTER E. CONFIDENTIALITY AND DISCLOSURE OF STATE**
22 **UNEMPLOYMENT COMPENSATION INFORMATION**

23 The Commission proposes new Subchapter E, as follows:

24
25 **§815.161. Scope and Purpose**

26 Section 815.161(a) states that the purpose of the subchapter is to implement the federal
27 regulations, 20 C.F.R. Part 603, and state law, Texas Labor Code, Chapter 301, Subchapter F,
28 regarding the confidentiality, custody, use, preservation, and disclosure of unemployment
29 compensation information.
30

31 Section 815.161(b) explains that this subchapter is limited to the confidentiality requirements in
32 federal and state laws and regulations specifically regarding unemployment information. The
33 section further states that additional limitations on the release, custody, use, preservation, and
34 disclosure of information maintained in unemployment insurance records may be imposed by
35 other laws and regulations.
36

37 Section 815.161(c) sets out that no right or obligation of the Agency, party to a claim, employer,
38 or third party to invoke limitations or confidentiality requirements based on such separate laws or
39 regulations is waived or limited by this subchapter. Additionally, this subchapter does not
40 address any right or obligation a party to an unemployment compensation claim may have to
41 redisclose unemployment insurance information regarding his or her own claim or
42 unemployment insurance tax records obtained lawfully from the Agency.
43

1
2 **§815.162. Definitions**

3 Section 815.162 sets forth the definitions for terms used throughout Subchapter E of Chapter
4 815.

5
6 Section 815.162(1) defines "confidential unemployment compensation information" as
7 unemployment compensation information in the records of the Agency, which includes
8 identifying information regarding any individual or past or present employer or employing unit--
9 including any information that foreseeably could be combined with other publicly available
10 information to reveal identifying information regarding the individual, employer, or employing
11 unit.

12
13 Section 815.162(2) defines "informed consent release" as a written grant of authorization that
14 meets the requirements of §815.166 of this subchapter made by an individual or employer to a
15 third party to allow access to confidential unemployment compensation information. When a
16 written release is impossible or impracticable to obtain, the third party may present such other
17 form of consent as is permitted by the Agency.

18
19 Section 815.162(3) defines "party" as the employer or claimant to whom the confidential
20 unemployment compensation information relates, including a base period employer that has
21 appealed a notice of chargeback regarding a specific claim. This term does not include any past
22 or present employer or claimant who is not the subject of the particular claim, except an
23 employer that appealed a notice of chargeback relating to an employee in the chargeback period.

24
25 Section 815.162(4) defines "public official" as:

26
27 (A) an official, agency, or public entity within the executive branch of federal, state, or local
28 government that has responsibility for administering or enforcing a law; or

29
30 (B) an elected official in the federal, state, or local government.

31
32 Section 815.162(5) defines "unemployment compensation information" as information in the
33 records of the Agency that pertains to the administration of the Texas Unemployment
34 Compensation Act, including any information collected, received, developed, or maintained in
35 the administration of unemployment compensation benefits, the unemployment compensation
36 tax system or the unemployment compensation benefit and tax appeal system.

37
38 **§815.163. Disclosure of Confidential Unemployment Compensation Information**

39 Section 815.163(a) states that the Agency shall not disclose confidential unemployment
40 compensation information except in compliance with federal law, state law, and this subchapter--
41 but notwithstanding any other provision of this chapter.

42
43 Section 815.163(b) explains that the Agency shall not disclose confidential unemployment
44 compensation information if such disclosure interferes with the efficient administration of the
45 state unemployment compensation law. In evaluating interference with efficient administration,

1 the Agency may consider factors including, but not limited to, the burdensomeness of the request
2 and whether the request places an employer's or individual's privacy at unacceptable risk.

3
4 **§815.164. Mandatory and Permissive Disclosures**

5 Section 815.164(a) clarifies that the Agency shall disclose confidential unemployment
6 compensation information if disclosure is necessary for the proper administration of the
7 unemployment compensation program.

8
9 Section 815.164(b) explains that disclosure necessary for the proper administration of the
10 unemployment compensation program includes, but is not limited to, disclosure required under
11 20 C.F.R. §603.6, as well as disclosure to claimants, employers, and third parties, as necessary,
12 for purposes of unemployment administration and adjudication processes under this chapter.

13
14 **§815.165. Exceptions to Confidentiality Requirements**

15 Section 815.165(a) allows the Agency to disclose public domain information. For purposes of
16 this section, public domain information is defined to include directory information about the
17 organization of the state, the Commission, and appellate authorities, as well as the names and
18 positions of officials and employees; information about the state unemployment compensation
19 law (and applicable federal law), provisions, rules, regulations, and interpretations, including
20 statements of general policy and interpretations of general applicability; and any agreement
21 relating to the administration of the state unemployment compensation law. Commission-
22 designated precedent case digests from which all individually identifiable information has been
23 removed also constitute public domain information. But public domain information does not
24 include information historically excepted from disclosure under the Public Information Act,
25 Chapter 552, Texas Government Code, including, but not limited to, attorney/client privileged
26 information; interagency memoranda containing advice, opinion, or recommendation to policy
27 makers or decision makers; or other items historically excepted from disclosure under the Public
28 Information Act.

29
30 Section 815.165(b) states that the Agency may disclose confidential unemployment
31 compensation information about an individual or employer to that individual or employer,
32 respectively, but in no event does this restrict the Agency from withholding information
33 historically excepted from disclosure including, but not limited to, confidential informant or
34 attorney-client privileged information, or tax audit techniques.

35
36 Section 815.165(c) provides that the Agency may disclose confidential unemployment
37 compensation information, so long as the requestor provides a written release demonstrating
38 informed consent signed by the individual or the employer whose records are requested, and if
39 the written release demonstrated informed consent.

40
41 Section 815.165(d)(1) - (5) states that the Agency may disclose confidential unemployment
42 compensation information, based on informed consent, to the following:

- 43
44 (1) An agent who acts for or in the place of an individual or an employer by the authority of that
45 individual or employer if the agent presents a written release signed by the party to be

1 represented. If a written release is impossible or impracticable to obtain, the Agency may
2 accept other documentation sufficient to establish informed consent.
3

- 4 (2) An elected official performing constituent services, so long as the official presents
5 reasonable evidence of authorization to obtain the information, such as a letter from the
6 individual or employer requesting the elected official's assistance or a written record of a
7 telephone request from the individual or employer that the individual or employer has
8 authorized such disclosure.
9
- 10 (3) A licensed attorney retained for purposes unrelated to the state's unemployment
11 compensation law; if the attorney provides a written statement declaring that he or she
12 has been retained to represent the individual or employer, the requirements of a written
13 release are met. An attorney retained for purposes related to the state's unemployment
14 compensation law may assert that he or she is representing the individual or employer,
15 and such assertion need not be in writing.
16
- 17 (4) A third party that is not acting as an agent, but only if that entity provides the Agency with a
18 copy of an informed consent release consistent with the requirements of §815.166 of this
19 subchapter.
20
- 21 (5) A third party seeking confidential information on an ongoing basis, only if that entity
22 submits an informed consent release consistent with the requirements of §815.166. This
23 requirement applies even if the third party is an agent seeking information on an ongoing
24 basis.
25

26 Section 815.165(e) provides that the Agency may disclose confidential unemployment
27 compensation information to a public official for use in the performance of his or her official
28 duties, including the administration or enforcement of law or execution of the official
29 responsibilities of a federal, state, or local elected official. Administration of law includes
30 research related to the law administered by the public official. Execution of official
31 responsibilities does not include solicitation of contributions or expenditures to or on behalf of a
32 candidate for public or political office or a political party.
33

34 Section 815.165(f) states that the Agency may disclose confidential unemployment
35 compensation information to a public official's agent or contractor if such disclosure is
36 permissible under 20 C.F.R. §603.5(e) and only after evaluating the following factors:
37

- 38 (1) the potential threat to the employer's or individual's privacy posed by an entity's collection,
39 storage, maintenance, use, and possible misuse of confidential unemployment
40 compensation information;
41 (2) the costs associated with such disclosure;
42 (3) the agent or contractor's ability to comply with the requirements in 20 C.F.R. §603.9
43 regarding safeguards and security of confidential unemployment compensation
44 information;
45 (4) the costs of enforcement, including investigation and assessment of penalties for misuse of
46 data;

- 1 (5) the costs to develop, monitor, and maintain systems sufficient to allow audit of the
- 2 information;
- 3 (6) the personnel, travel, and equipment expenses associated with periodic monitoring and on-
- 4 site audits required by 20 C.F.R. §603.10; and
- 5 (7) whether the disclosure is for purposes of solicitation of contributions or expenditures to or
- 6 on behalf of a candidate for public or political office or a political party.
- 7

8 Section 815.165(g) explains that the Agency may disclose confidential unemployment
9 compensation information to parties for purposes of claims adjudications, hearings and appeals,
10 consistent with this chapter.

11
12 Section 815.165(h) provides that the Agency may disclose confidential unemployment
13 compensation information to a federal official for purposes of UC program oversight and audits,
14 including disclosures under 20 C.F.R. Parts 29 and 601, as well as under 20 C.F.R. Parts 96 and
15 97.

16
17 Section 815.165(i) clarifies that the confidentiality requirements of this chapter do not apply to
18 information collected exclusively for statistical purposes under a cooperative agreement with the
19 Bureau of Labor Statistics (BLS). Further, this chapter's requirements do not restrict or impose
20 any condition on the transfer of any other information to BLS under an agreement, or the
21 disclosure or use of such information by BLS.

22 23 **§815.166. Informed Consent Release**

24 Section 815.166(1) - (5) allows the Agency to disclose confidential unemployment compensation
25 information upon submission of an informed consent release as set forth in this section. An
26 informed consent release is a written release that must be signed by the individual or employer,
27 and must specify the following:

- 28
- 29 (1) The information to be disclosed;
- 30 (2) That the information will be obtained through access of state government files;
- 31 (3) The purpose or purposes for which the information is sought;
- 32 (4) That the information obtained under the release will be used only for that purpose or
- 33 purposes;
- 34 (5) The individuals or entities that may receive the information; and
- 35 (6) A purpose limited to assisting the individual with obtaining a service or benefit, or meeting
- 36 a federal or state law requirement for the administration or evaluation of a public program to
- 37 which the release pertains.
- 38

39 **§815.167. Subpoenas and Court Orders**

40 Section 815.167(1) - (2) states that the Agency may disclose confidential unemployment
41 compensation information in compliance with:

- 42 (1) a court order specifically requiring such disclosure; or
- 43 (2) a subpoena issued by a local, state, or federal official, other than a court clerk, provided the
- 44 official possesses legal authority to obtain such information by subpoena under state or federal
- 45 law.
- 46

1 **§815.168. Charges for Disclosure of Unemployment Compensation Information**

2 Section 815.168(a) requires the Agency to recoup the cost of providing unemployment
3 compensation information consistent with 20 C.F.R. §603.8. It allows the Agency to charge
4 actual charges and to set standardized charges for items routinely requested.
5

6 Section 815.168(b) states that the Agency may only release unemployment compensation
7 information for non-unemployment compensation purposes to the following individuals if the
8 unemployment compensation program is reimbursed and there is a written, enforceable
9 confidentiality agreement:

- 10 (1) third-party requestors;
11 (2) public officials; and
12 (3) contractors of public officials, provided the public officials remain liable for the actions of
13 the contractor.
14
15

16 **PART III. IMPACT STATEMENTS**

17
18 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
19 years the rules will be in effect, the following statements will apply:
20

21 There are no additional estimated costs to the state and local governments expected as a result of
22 enforcing or administering the rules.
23

24 There are no estimated reductions in costs to the state and to local governments as a result of
25 enforcing or administering the rules.
26

27 There are no estimated losses or increases in revenue to the state or to local governments as a
28 result of enforcing or administering the rules.
29

30 There are no foreseeable implications relating to costs or revenue of the state or local
31 governments as a result of enforcing or administering the rules.
32

33 There are no anticipated economic costs to persons required to comply with the rules.
34

35 There is no anticipated adverse economic impact on small or microbusinesses as a result of
36 enforcing or administering the rules.
37

38 **Economic Impact Statement and Regulatory Flexibility Analysis**
39

40 The Agency has determined that the proposed rules will not have an adverse economic impact on
41 small businesses as these proposed rules place no new requirements on small businesses.
42

43 Our reasoning is strongly influenced by the requirements of 20 C.F.R. Part 603 (*Federal*
44 *Register*, September 27, 2006), which provides in §603.8 that federal unemployment
45 compensation grant funds may not be used to pay any of the costs of making any disclosure of
46 unemployment compensation information, that the costs to a state unemployment compensation

1 agency of processing and handling a request for disclosure of information must be calculated in
2 accordance with the cost principles and administrative requirements of 29 C.F.R. Part 97 and
3 OMB Circular No. A-87, and that the costs to a state unemployment compensation agency of
4 making a disclosure of unemployment compensation information must be paid by the recipient
5 of the information or another source paying on behalf of the recipient. We do not consider the
6 requirement to recover the costs of making the disclosure of unemployment compensation
7 information covered by these rules either a new requirement or a requirement of these rules,
8 themselves, nor do we consider the requirement that the disclosure of this unemployment
9 compensation information must be paid by the recipient of the information (or another source
10 paying on behalf of the recipient) to be either a new requirement or one created by these rules.
11

12 Mark Hughes, Director of Labor Market Information, has determined that there is no significant
13 negative impact upon employment conditions in the state as a result of the rules.
14

15 LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each
16 year of the first five years the rules are in effect, the public benefit anticipated as a result of
17 enforcing the proposed amendments will be to ensure compliance with federal and state
18 requirements.
19

20 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
21 be within the Agency's legal authority to adopt.
22
23

24 **PART IV. COORDINATION ACTIVITIES** 25

26 In the development of these rules for publication and public comment, the Commission sought the
27 involvement of each of Texas' 28 Boards. The Commission provided the policy concept to each of the
28 Boards for consideration and review. During the rulemaking process, the Commission considered all
29 information gathered in order to develop rules that provide clear and concise direction to all parties
30 involved.
31

32 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
33 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,
34 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
35 The Commission must receive comments postmarked no later than 30 days from the date this
36 proposal is published in the *Texas Register*.
37

38 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the
39 Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for
40 the effective administration of Agency services and activities. Further, these rules are proposed
41 under Texas Labor Code §301.085(b), which requires that, consistent with federal law, the
42 Commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use,
43 preservation, and disclosure of unemployment compensation information. The rules must
44 include safeguards to protect the confidentiality of identifying information regarding any
45 individual or any past or present employer or employing unit

1 contained in unemployment compensation information, including any information that
2 foreseeably could be combined with other publicly available information to reveal identifying
3 information regarding the individual, employer, or employing unit, as applicable.

4

5 The proposed rules affect Texas Labor Code, Title IV.

6

1
2 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

3
4 **SUBCHAPTER B. BENEFITS, CLAIMS AND APPEALS**

5
6 **§815.18. General Rules for Both Appeal Stages**

7
8 This section shall be applicable to appeals both to the appeal tribunal and to the
9 Commission.

10
11 (1) Issuance of subpoenas.

12
13 (A) Subpoenas to compel the attendance of witnesses and the production of
14 records for any hearing of an appeal may be issued at the direction of the
15 Commission or its designee or an appeal tribunal. A subpoena may be
16 issued either at the request of a party or on the motion of the Commission
17 or its designee or the appeal tribunal. The party requesting a subpoena
18 shall state the nature of the information desired, including names of any
19 witnesses and the records that the requestor feels are necessary for the
20 proper presentation of the case. The request shall be granted only to the
21 extent the records or the testimony of the requested witnesses appears to
22 be relevant to the issues on appeal.

23
24 (B) A witness subpoenaed to appear before an appeal tribunal, the
25 Commission or its designee, or a court may be paid a fee and mileage for
26 the appearance. The fee shall be \$20 per day, and for miles necessarily
27 traveled to and returning from a hearing, the rate per mile shall be at the
28 rate provided for state employees in the State [Appropriations](#)
29 ~~Appropriation~~ Act, or as otherwise required by law. The fee as provided in
30 this section and the mileage shall be paid from the unemployment
31 compensation administration fund upon proper certification of the appeal
32 tribunal, the Commission or its designee, or the court, and upon
33 certification of the witness that the fees and mileage are just, true, and
34 unpaid.

35
36 (2) [Provision of](#) ~~Request for~~ Agency records ~~by a party~~.

37
38 (A) Upon the request of a party to a proceeding, the Agency shall provide
39 copies of all records pertaining to that proceeding, except for records
40 subject to privileges under state or federal law or regulation. Other
41 Agency records shall be produced only if the party specifies the exact
42 information desired, and the necessity of the records to allow the party to
43 properly present its claim; the production of records shall be subject to
44 confidentiality limitations and privileges under state or federal law or
45 regulation.
46

1 (B) The Agency shall provide copies of the relevant separation and timeliness
2 information in the Agency's custody to both parties with the Notice of
3 Hearing, including:

- 4
5 (i) all information received from the parties in response to, or in protest
6 of, a claim for unemployment insurance;
7 (ii) all fact-finding statements relating to the work separation; and
8 (iii) the appeal from the determination of the work separation.
9

10 (3) Representation before appeal tribunal and the Commission.
11

12 (A) An individual who is a party to a proceeding may appear before an appeal
13 tribunal or the Commission or its designee.

14 (B) A partnership may be represented by any of its members or a duly
15 authorized representative. Any corporation or association may be
16 represented by an officer or a duly authorized representative.

17 (C) Any party may appear by an attorney at law or by any other individual who
18 is qualified to represent others.

19 (D) The Commission or its designee or an appeal tribunal may refuse to allow
20 any individual to represent others in any proceeding before it if the
21 individual acts or speaks in an unethical manner or if the individual
22 intentionally and repeatedly fails to observe the provisions of the Act or
23 the rules of the Agency.
24

25 (4) Removing a party from a proceeding. The Commission or its designee or an
26 appeal tribunal may, after an appropriate warning, expel from any proceeding any
27 individuals, whether or not a party, who fail ~~fails~~ to comport themselves in a
28 manner befitting the proceeding. The Commission or its designee or an appeal
29 tribunal may then continue with the proceeding, hear evidence, and render a
30 decision on the appeal.
31

32 (5) Appeal Information. An appeal tribunal decision sent to a party of interest, or the
33 Commission's decision sent to a party, will include or be accompanied by a
34 notice specifying the appeal rights of the parties, the procedure for filing further
35 appeal, and the time period within which an appeal shall be filed.
36

37 (6) Retention of Decisions. Copies of decisions of the Commission and of appeal
38 tribunals shall be kept in accordance with the approved records retention
39 schedule.
40

1
2 **SUBCHAPTER E. CONFIDENTIALITY AND DISCLOSURE OF STATE**
3 **UNEMPLOYMENT COMPENSATION INFORMATION**
4

5 **§815.161. Scope and Purpose**
6

- 7 (a) The purpose of this subchapter is to implement the federal regulations, 20 C.F.R. Part
8 603, and state law, Texas Labor Code, Chapter 301, Subchapter F, regarding the
9 confidentiality, custody, use, preservation, and disclosure of unemployment
10 compensation information.
11
- 12 (b) This subchapter is limited to the confidentiality requirements in federal and state laws
13 and regulations specifically regarding unemployment information. Other laws and
14 regulations may impose additional limitations on the release, custody, use,
15 preservation, and disclosure of information maintained in unemployment insurance
16 records.
17
- 18 (c) This subchapter does not:
19
- 20 (1) limit or waive any right or obligation of the Agency, party to a claim,
21 employer, or third party to invoke limitations or confidentiality requirements
22 based on such separate laws or regulations; or
23
- 24 (2) address any right or obligation a party to an unemployment compensation
25 claim may have to redisclose unemployment insurance information regarding
26 his or her own claim or unemployment insurance tax records obtained lawfully
27 from the Agency.
28

29 **§815.162. Definitions**
30

31 The following words and terms, when used in this subchapter, shall have the following
32 meanings, unless the context clearly indicates otherwise.
33

- 34 (1) Confidential unemployment compensation information -- Unemployment
35 compensation information in Agency records, including identifying
36 information regarding any individual or past or present employer or employing
37 unit, or any information that foreseeably could be combined with other
38 publicly available information to reveal identifying information regarding the
39 individual, employer, or employing unit.
40
- 41 (2) Informed consent release -- A written grant of authorization that meets the
42 requirements of §815.166 of this subchapter made by an individual or
43 employer to a third party to allow access to confidential unemployment
44 compensation information. When a written release is impossible or
45 impracticable to obtain, the third party may present such other form of consent
46 as is permitted by the Agency.

1
2 (3) Party -- The employer or claimant to whom the confidential unemployment
3 compensation information relates. A party includes a base period employer
4 that has appealed a notice of chargeback regarding a specific claim. A party
5 does not include any past or present employer or claimant who is not the
6 subject of the particular claim, except an employer that appealed a notice of
7 chargeback relating to an employee in the chargeback period.

8
9 (4) Public official --

10
11 (A) An official, agency, or public entity within the executive branch of federal,
12 state, or local government with responsibility for administering or
13 enforcing a law; or

14
15 (B) An elected official in the federal, state, or local government.

16
17 (5) Unemployment compensation information -- Information in the Agency's
18 records that pertains to the administration of the Texas Unemployment
19 Compensation Act, including any information collected, received, developed,
20 or maintained in the administration of unemployment compensation benefits,
21 the unemployment compensation tax system, or the unemployment
22 compensation benefit and tax appeal system.

23
24
25 **§815.163. Disclosure of Confidential Unemployment Compensation Information**

- 26
27 (a) The Agency shall not disclose confidential unemployment compensation information
28 except in compliance with federal law, state law, and this subchapter.
29 (b) Notwithstanding any other provision of this chapter, confidential unemployment
30 compensation information shall not be disclosed if such disclosure interferes with the
31 efficient administration of the state unemployment compensation law. In evaluating
32 interference with efficient administration, the Agency may consider factors including
33 but not limited to, the burdensomeness of the request and whether the request places
34 an employer's or individual's privacy at unacceptable risk.

35
36 **§815.164. Mandatory and Permissive Disclosures**

- 37
38 (a) The Agency shall disclose confidential unemployment compensation information if
39 disclosure is necessary for the proper administration of the unemployment
40 compensation program.
41
42 (b) Disclosure necessary for the proper administration of the unemployment
43 compensation program includes, but is not limited to, disclosure required under 20
44 C.F.R. §603.6 and disclosure to claimants, employers, and third parties, as necessary,
45 for purposes of unemployment administration and adjudication processes under this
46 chapter.

1
2 **§815.165. Exceptions to Confidentiality Requirements**
3

- 4 (a) The Agency may disclose public domain information. For purposes of this section,
5 public domain information includes directory information about the organization of
6 the state, the Commission, and appellate authorities, as well as the names and
7 positions of officials and employees; information about the state unemployment
8 compensation law (and applicable federal law), provisions, rules, regulations, and
9 interpretations, including statements of general policy and interpretations of general
10 applicability; and any agreement relating to the administration of the state
11 unemployment compensation law. Commission-designated precedent case digests
12 from which all individually identifiable information has been removed constitute
13 public domain information. Public domain information does not include information
14 historically excepted from disclosure under the Public Information Act, Chapter 552,
15 Texas Government Code, including, but not limited to, attorney/client privileged
16 information; interagency memoranda containing advice, opinion, or recommendation
17 to policy makers or decision makers; or other items historically excepted from
18 disclosure under the Public Information Act.
19
- 20 (b) The Agency may disclose confidential unemployment compensation information
21 about an individual or employer to that individual or employer, respectively , but in
22 no event does this restrict the Agency from withholding information historically
23 excepted from disclosure, including, but not limited to, confidential informant or
24 attorney-client privileged information, or tax audit techniques.
25
- 26 (c) The Agency may disclose confidential unemployment compensation information if
27 the requestor provides a written release signed by the individual or the employer
28 whose records are requested, and if the written release demonstrates informed
29 consent.
30
- 31 (d) The Agency may disclose confidential unemployment compensation information,
32 based on informed consent, to the following:
33
- 34 (1) An agent acting for or in the place of an individual or an employer by the
35 authority of that individual or employer if the agent presents a written release
36 signed by the party to be represented. If a written release is impossible or
37 impracticable to obtain, the Agency may accept other documentation sufficient
38 to establish informed consent.
39
- 40 (2) An elected official performing constituent services provided the official
41 presents reasonable evidence of authorization to obtain the information, such
42 as a letter from the individual or employer requesting the elected official's
43 assistance or a written record of a telephone request from the individual or
44 employer that the individual or employer has authorized such disclosure.
45

- 1 (3) A licensed attorney retained for purposes unrelated to the state's
2 unemployment compensation law; if the attorney provides a written statement
3 declaring that he or she has been retained to represent the individual or
4 employer, the requirements of a written release will have been met. An
5 attorney retained for purposes related to the state's unemployment
6 compensation law may assert that he or she is representing the individual or
7 employer, and such assertion need not be in writing.
8
- 9 (4) A third party that is not acting as an agent, only if that entity provides the
10 Commission with a copy of an informed consent release consistent with the
11 requirements of §815.166 of this subchapter.
12
- 13 (5) A third party seeking confidential information on an ongoing basis, only if that
14 entity submits an informed consent release consistent with the requirements of
15 §815.166. This requirement applies even if the third party is an agent seeking
16 information on an ongoing basis.
17
- 18 (e) The Agency may disclose confidential unemployment compensation information to a
19 public official for use in the performance of his or her official duties, including the
20 administration or enforcement of law or execution of the official responsibilities of a
21 federal, state, or local elected official. Administration of law includes research
22 related to the law administered by the public official. Execution of official
23 responsibilities does not include solicitation of contributions or expenditures to or on
24 behalf of a candidate for public or political office or a political party.
25
- 26 (f) The Agency may disclose confidential unemployment compensation information to a
27 public official's agent or contractor if such disclosure is permissible under 20 C.F.R.
28 §603.5(e) and only after evaluating the following factors:
29
- 30 (1) The potential threat to the employer's or individual's privacy posed by an
31 entity's collection, storage, maintenance, use, and possible misuse of
32 confidential unemployment compensation information;
33
- 34 (2) The costs associated with such disclosure;
35
- 36 (3) The agent or contractor's ability to comply with the requirements in 20 C.F.R.
37 §603.9 regarding safeguards and security of confidential unemployment
38 compensation information;
39
- 40 (4) The costs of enforcement, including investigation and assessment of penalties
41 for misuse of data;
42
- 43 (5) The costs to develop, monitor, and maintain systems sufficient to allow audit
44 of the information;
45

1 (6) The personnel, travel, and equipment expenses associated with periodic
2 monitoring and on-site audits required by 20 C.F.R. §603.10; and
3

4 (7) Whether the disclosure is for purposes of solicitation of contributions or
5 expenditures to or on behalf of a candidate for public or political office or a
6 political party.
7

8 (g) The Agency may disclose confidential unemployment compensation information to
9 parties for purposes of claims adjudications, hearings, and appeals, consistent with
10 this chapter.
11

12 (h) The Agency may disclose confidential unemployment compensation information to a
13 federal official for purposes of UC program oversight and audits, including
14 disclosures under 20 C.F.R. Parts 29 and 601, as well as under C.F.R. Parts 96 and
15 97.
16

17 (i) The confidentiality requirements of this chapter do not apply to information collected
18 exclusively for statistical purposes under a cooperative agreement with the Bureau of
19 Labor Statistics (BLS). Further, this chapter's requirements do not restrict or impose
20 any condition on the transfer of any other information to BLS under an agreement, or
21 the disclosure or use of such information by BLS.
22

23 **§815.166. Informed Consent Release**

24
25 The Agency may disclose confidential unemployment compensation information upon
26 submission of an informed consent release as set forth in this section. An informed
27 consent release is a written release that must be signed by the individual or employer, and
28 must specify the following:
29

- 30 (1) The information to be disclosed;
- 31 (2) That the information will be obtained through access of state government files;
- 32 (3) The purpose or purposes for which the information is sought;
- 33 (4) That the information obtained under the release will be used only for that
34 purpose;
- 35 (5) The individuals or entities that may receive the information; and
- 36 (6) A purpose limited to assisting the individual with obtaining a service or
37 benefit, or meeting a federal or state law requirement for the administration or
38 evaluation of a public program to which the release pertains.
39

40 **§815.167. Subpoenas and Court Orders**

41
42 The Agency may disclose confidential unemployment compensation information in
43 compliance with:
44

- 45 (1) a court order specifically requiring such disclosure; or

- 1 (2) a subpoena issued by a local, state, or federal official, other than a court clerk,
2 provided the official possesses legal authority to obtain such information by
3 subpoena under state or federal law.
4

5 **§815.168. Charges for Disclosure of Unemployment Compensation Information**
6

- 7 (a) The Agency shall recoup the cost of providing unemployment compensation
8 information consistent with 20 C.F.R. §603.8. The Agency may charge actual
9 charges and may set standardized charges for items routinely requested.
10
11 (b) The Agency may only release unemployment compensation information for non -
12 unemployment compensation purposes to the following individuals if the
13 unemployment compensation program is reimbursed and there is a written,
14 enforceable confidentiality agreement:
15
16 (1) Third-party requestors;
17 (2) Public officials; and
18 (3) Contractors of a public official provided the public official remains liable for
19 the actions of the contractor.
20
21