

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 **ON JULY 14, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
8 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**
9

10 The Texas Workforce Commission (Agency) proposes amendments to the following sections of
11 Chapter 815, relating to Unemployment Insurance:
12

- 13 Subchapter A. General Provisions, §815.1
- 14 Subchapter B. Benefits, Claims and Appeals, §815.12
- 15 Subchapter F. Extended Benefits, §§815.170 - 815.172, 815.174

16
17 The Agency proposes the repeal of the following sections of Chapter 815, relating to
18 Unemployment Insurance:
19

- 20 Subchapter B. Benefits, Claims, and Appeals, §815.29
- 21 Subchapter F. Extended Benefits, §815.173

22
23 The Agency proposes the following new subchapter to Chapter 815, relating to Unemployment
24 Insurance:
25

- 26 Subchapter G. CARES Act Provisions, §§815.180 - 815.185

- 27
- 28 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 29 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 30 **PART III. IMPACT STATEMENTS**
- 31 **PART IV. COORDINATION ACTIVITIES**

32
33 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

34 The purpose of the proposed Chapter 815 rule change is to address the requirements of the
35 Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), the
36 Coronavirus Aid, Relief, and Economic Security Act (CARES Act) as well as to exercise the
37 authority bestowed upon the Agency by Texas Labor Code §209.025.
38

39 Federal Funding Under EUISSA
40

41 On March 18, 2020, Congress enacted EUISAA, which provides states with emergency funding
42 grants for the administration of their unemployment compensation (UC) programs. The purpose
43 of these grants is to assist states with the unprecedented claim volumes associated with COVID-
44 19.
45

1 These grants are allocated into two separate allotments, Allotment I and II. Under EUISAA
2 §4105, if a state meets the requirements of and obtains both Allotment I and II, the Federal
3 Government will pay 100 percent of any Extended Benefits (EB), beginning on March 18, 2020
4 until December 31, 2020.

5
6 One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires
7 employers to provide notification of the availability of unemployment compensation to
8 employees at the time of separation from employment." The US Department of Labor has stated
9 that this notice must be made individually to the separated employee.

10
11 The Agency has the authority under Texas Labor Code §208.001(b) to require this individual
12 notice. Texas Labor Code §208.001(b) provides that "The commission shall supply, without cost
13 to each employer, printed notices that provide general information about filing a claim for
14 unemployment benefits. Each employer shall post and maintain the notices in places accessible
15 to the individuals in the employ of the employer." To clarify how this notice must be provided,
16 the Commission has determined it prudent to amend Agency rules to define "places accessible"
17 to include general notice in the workplace and an individual notice upon separation.

18
19 Texas Labor Code §209.025 provides that "Notwithstanding any other provision of this
20 subchapter, the commission by rule may adjust the extended benefit eligibility period as
21 necessary to maximize the receipt of any fully funded federal extended unemployment benefits,
22 if full federal funding for those benefits is available."

23
24 Currently, Texas Labor Code Chapter 209 provides for an Insured Unemployment Rate (IUR)
25 trigger for EB, with benefit eligibility lasting a maximum of 13 weeks. Federal law, however,
26 provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger
27 also provides that in periods of high unemployment, an additional seven weeks of EB benefit
28 eligibility is available.

29
30 In order to maximize the receipt of fully funded federal EB anticipated by Texas Labor Code
31 §209.025, the Agency must implement the optional TUR trigger with the high unemployment
32 rate period. To ensure that the Agency maximizes the federal funding, a provision is being added
33 to allow for additional weeks of benefit eligibility, in excess of the current seven, if provided for
34 by federal law. Other provisions addressing coordination of benefit programs and the treatment
35 of certain governmental and tribal employers are also addressed.

36
37 Existing Chapter 815 Subchapter F is explicitly tied to the Tax Relief, Unemployment Insurance
38 Reauthorization, and Job Creation Act of 2010 (P.L. 111 - 312). Subchapter F is being amended
39 to be generally applicable and effective when full federal funding exists.

40 41 Federal Extended Benefit Programs

42
43 Subsequently on March 27, 2020 Congress enacted the CARES Act. These provisions provide
44 for new, limited duration, entitlement programs including, Federal Pandemic Unemployment
45 Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Federally
46 Reimbursed Waiting Week (FRWW), and Pandemic Unemployment Assistance (PUA). On

1 March 28, 2020, under delegated authority from Texas Governor Greg Abbott, Agency
2 Executive Director Ed Serna executed an agreement with the Secretary of Labor to carry out
3 these provisions of the CARES Act.

4
5 FPUC provides an additional \$600 payment on top of other UC payments from the period
6 covering the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020,
7 unless extended. PEUC provides an additional 13 weeks of UC payments to eligible individuals
8 who exhaust their regular compensation benefits and it expires with the benefit week ending
9 December 26, 2020. FRWW will also expire with the benefit week ending December 26, 2020.
10 PUA is a disaster UC program for an individual not eligible for regular compensation, EB, or
11 PEUC, including those who have exhausted other UC programs. PUA currently provides for 39
12 weeks of benefits, minus regular compensation and EB, and covers individuals not traditionally
13 covered under UC, including independent contractors and the self-employed. PUA also expires
14 with the benefit week ending December 26, 2020.

15
16 Under the CARES Act, FPUC, PEUC, and the FRWW require that a claimant, who receives
17 benefits to which the claimant is not entitled, repay those benefits unless the payment was made
18 to the claimant without fault and such repayment would be contrary to equity and good
19 conscience. Current §815.12 contains these waiver and overpayment regulations for the
20 Temporary Emergency Unemployment Compensation (TEUC) program of 2001, and by
21 extension, the Emergency Unemployment Compensation (EUC) program of 2008. However, it
22 does not contain corresponding provisions for the new pandemic programs FPUC, PEUC, and
23 the FRWW.

24
25 To remedy this, §815.12 is being amended to be generally applicable to conforming federal
26 extended unemployment compensation programs. By doing so, if Congress were to pass another
27 extended unemployment compensation program in line with previous extension programs, the
28 rule language for waiver and overpayment would not require additional rulemaking. References
29 to TEUC will be replaced with "federal extended unemployment compensation." Subsection
30 815.12(i) will be removed because such a presumption of financial hardship is not generally
31 applicable. Finally, the waiver provisions of §815.12 are being amended to reflect the more
32 efficient practice whereby the waiver is automatically considered by the Agency rather than
33 requiring the claimant request a waiver in writing.

34
35 Section 815.29 contains the rule defining the coordination between Extended Unemployment
36 Compensation and regular compensation as required by P.L. 111 - 205 §3. This section is being
37 repealed as it is no longer applicable.

38
39 For convenience and ease of use, new Subchapter G is being created to contain rules for the
40 CARES Act. New Subchapter G will address definitions, coordination of programs, appeals,
41 overpayments, and fraud.

42
43 The definitions will define the CARES Act programs. The coordination rules will address the
44 interactions between existing benefit programs and those provided for in the CARES Act. These
45 rules are necessary to provide the order in which each of these benefit programs are paid to
46 claimants.

1
2 The appeals rules will address the appellate procedure for CARES Act programs. The
3 overpayment rules will address the deduction of CARES Act program benefit payments to
4 recover previously overpaid benefits to which the claimant is not entitled. The fraud rules will
5 address fraud penalties and PUA fraud.

6
7 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

10
11 **SUBCHAPTER A. GENERAL PROVISIONS**

12 **The Agency proposes the following amendments to Subchapter A:**

13
14 **§815.1. Definitions.**

15 Section 815.1 is amended to add new paragraph (14), which defines "places accessible" as
16 locations in which an employer shall provide required notices to an employee, as provided in the
17 Act, Chapter 208.

18
19 New subparagraph (A) provides that "places accessible" includes notices containing the required
20 information are to be displayed in a manner reasonably calculated to be encountered by all
21 employees.

22
23 New subparagraph (B) provides that "places accessible" means an employer must provide the
24 required notice information individually to an employee upon separation from employment. As
25 the notice is provided directly to the individual, the employer has significant flexibility in how
26 this information may be made known. Such information may be provided in a paper format,
27 including by mail or with separation paperwork, email, text, or other means reasonably
28 calculated to ensure the individual receives the required notification.

29
30 Existing paragraphs (14) and (15) are renumbered to (15) and (16).

31
32 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

33 **The Agency proposes the following amendments to Subchapter B:**

34
35 **§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment**
36 **Compensation Overpayments.**

37 Section 815.12 is amended as follows:

38
39 Subsections (a) - (h) have been amended to change references to Temporary Extended
40 Unemployment Compensation (TEUC) to federal extended unemployment compensation.

41
42 Subsections (b) - (d) have been amended to reflect that an overpayment waiver determination
43 will be made by the Agency or the Commission without a written request from a claimant. The
44 decision may be appealed in accordance with Chapter 212 of the Act and under the
45 administrative regulations of §§815.16 - 815.18.

1 Subsections (i) and (j) are removed and subsection (k) is relettered to subsection (i). New
2 subsection (j) is added to reflect that for the purposes of this section, a federal extended
3 unemployment compensation program is an unemployment compensation program enacted by
4 Congress that provides additional federally funded benefits. It does not include EB under
5 Chapter 815 Subchapter F or Chapter 209 of the Act.

6
7 **§815.29. Coordination of Emergency Unemployment Compensation with Regular**
8 **Compensation.**

9 Section 815.29 is repealed as it relates to legislation no longer in effect.

10
11 **SUBCHAPTER F. EXTENDED BENEFITS**

12 **The Agency proposes the following amendments to Subchapter F:**

13
14 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**

15 Section 815.170 is amended as follows:

16
17 Subsection (a) provides that pursuant to §209.025 of the Act, if full federal funding for EB is
18 available, a week is a state "on" indicator week if:

19
20 -- the average rate of total unemployment in Texas (seasonally adjusted), as determined by the
21 U.S. Secretary of Labor, for the period consisting of the most recent three months for which data
22 for all states are published before the close of such week equals or exceeds 6.5 percent; and

23
24 --the average rate of total unemployment in Texas (seasonally adjusted), as determined by the
25 U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this
26 subsection, equals or exceeds 110 percent of such average rate for either, or both, of the
27 corresponding three-month periods ending in the two preceding calendar years.

28
29 Subsection (b) states that there is a state "off" indicator for a week if either the requirements of
30 subsection (a)(1) or (a)(2) are not satisfied.

31
32 Subsection (c) clarifies that notwithstanding this section, any week for which there would
33 otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week
34 and shall not be determined to be a week for which there is a state "off" indicator.

35
36 Subsection (d) is deleted.

37
38 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**

39 Section 815.171 is amended as follows:

40
41 Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a).
42 If the conditions under §815.170(a) are met, and the average rate of total unemployment equals
43 or exceeds 8 percent, a high unemployment period exists.

1 Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the
2 total extended benefit amount payable to an eligible claimant for the claimant's eligibility period
3 is the lesser of:

4
5 --80 percent of the total amount of regular compensation payable to the claimant during the
6 claimant's benefit year under the Act;

7
8 --20 times the claimant's average weekly benefit amount; or

9
10 --46 times the claimant's average weekly benefit amount, reduced by the regular compensation
11 paid, during the claimant's benefit year under the Act.

12
13 Subsection (c) provides that if the full federal funding for EB provides for an additional extended
14 benefit amount payable to an eligible claimant in excess of that provided for in subsection (b),
15 then that amount shall be the total extended benefit amount.

16
17 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

18 Section 815.172 is amended to capitalize Extended Benefits.

19
20 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**
21 **Benefits.**

22 Section 815.173 is repealed as it relates to legislation no longer in effect.

23
24 **§815.174. Financing of Extended Benefits.**

25 Section 815.174 is amended as follows:

26
27 Subsection(a) provides that if full federal funding for EB is available, the provisions of
28 §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, of the
29 Act shall not apply; however, subsection (b) states that the provisions of §209.084, Charges to
30 Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to
31 apply.

32
33 Subsection (c) is deleted.

34
35 **SUBCHAPTER G. CARES ACT PROVISIONS**

36 **The Agency proposes new Subchapter G:**

37
38 **§815.180. Definitions.**

39 New §815.180 defines the terms for Subchapter G.

40
41 New paragraph (1) defines CARES Act as the Coronavirus Aid, Relief, and Economic Security
42 Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and
43 Businesses; Subtitle A--Unemployment Insurance Provisions.

44
45 New paragraph (2) defines FPUC as the Federal Pandemic Unemployment Compensation
46 provisions of §2104 of the CARES Act.

1
2 New paragraph (3) defines FRWW as the Federally Reimbursed Waiting Week provisions of
3 §2105 of the CARES Act.

4
5 New paragraph (4) defines PEUC as the Pandemic Emergency Unemployment Compensation
6 provisions of §2107 of the CARES Act.

7
8 New paragraph (5) defines PUA as the Pandemic Unemployment Assistance provisions of §2102
9 of the CARES Act.

10
11 **§815.181. Coordination of CARES Act Programs.**

12 New §815.181 describes how CARES Act programs will be integrated into existing benefit
13 programs.

14
15 New subsection (a) provides for the program order in which a claimant can claim benefits. That
16 order is as follows:

17
18 For a claimant who is eligible for regular compensation, including Unemployment Compensation
19 for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers
20 (UCX), the following order of payment applies:

21 --The claimant must first apply for and receive regular compensation. The amount and duration
22 of these benefits are as defined by the Act;

23 --if the claimant exhausts regular compensation, the claimant may then be eligible to receive
24 PEUC;

25 --if the claimant exhausts PEUC and the state has "triggered on" to EB under Chapter 209 of the
26 Act, the claimant may then be eligible to receive EB;

27 --if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be
28 eligible to receive PUA. If the State " triggers on" to EB during the period in which the claimant
29 is collecting PUA and the claimant has not previously exhausted entitlement to EB for the
30 respective benefit year, then the claimant must stop collecting PUA and file for EB; and

31 --if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such
32 benefits will be payable after regular compensation, PEUC, and EB if "triggered on", but prior to
33 PUA.

34
35 New subsection (b) describes that for a claimant who is not eligible for regular compensation,
36 PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to
37 collect PUA.

38
39 New subsection (c) addresses the additional compensation provided by FPUC. FPUC provides
40 for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a
41 Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment
42 Assistance (DUA). Claimants will receive FPUC payments concurrently with the respective

1 underlying program for which the claimant is eligible. This applies for the benefit week ending
2 April 4, 2020, through the benefit week ending July 25, 2020 unless subsequently amended by
3 federal law.

4
5 **§815.182. Appeals**

6 New §815.182 specifies the appeals process for CARES Act programs.

7
8 New subsection (a) states a claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA
9 determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the
10 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from
11 Determinations), §815.17 of this chapter (relating to Appeals to the Commission from
12 Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

13
14 New subsection (b) clarifies an employer is not a "party of interest," pursuant to §815.15(c), to a
15 FPUC, FRWW, PEUC, or PUA determination and therefore does not have appeal rights. An
16 employer may appear at a FPUC, FRWW, PEUC, or PUA hearing to offer evidence.

17
18 New subsection (c) relates to FPUC. It specifies that, when considering an appeal involving
19 FPUC, the Appeal Tribunal and Commission shall look to the merits of the denial of the
20 underlying benefit when determining eligibility for FPUC payments.

21
22 **§815.183. Waiver**

23 New §815.183 lays out which CARES Act programs are subject to a potential waiver of
24 overpayments.

25
26 New subsection (a) states FPUC, the FRWW, and PEUC are federal extended unemployment
27 compensation programs and therefore subject to §815.12.

28
29 New subsection (b) clarifies that PUA, as provided by P.L. 116 - 136 §2102, is related to
30 Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal
31 Regulations. Therefore, PUA does not constitute a federal extended unemployment
32 compensation program and the waiver provisions of §815.12 do not apply.

33
34 **§815.184. Overpayments**

35 New §815.184 explains how CARES Act program overpayments will be administered.

36
37 New subsection (a) states that unless a FPUC, FRWW, or PEUC overpayment is otherwise
38 recovered, or is waived, the Agency shall, during the three-year period after the date the claimant
39 received the payment of FPUC, FRWW, or PEUC to which the claimant was not entitled,
40 recover the overpayment by deductions from any sums payable to the claimant. No single
41 deduction may exceed 50 percent of the amount otherwise payable to the claimant.

42
43 New subsection (b) states that unless a PUA overpayment is otherwise recovered, the Agency
44 shall recover the overpayment by deductions from any sums payable to the claimant. A PUA
45 overpayment may not be waived per §815.183(b) and is not subject to the three-year period

1 limitation stated in §815.184(a). No single deduction may exceed 50 percent of the amount
2 otherwise payable to the claimant.

3
4 New subsection (c) states that if a claimant has an unemployment benefits overpayment with an
5 appropriate agency in another state, and the Agency has a reciprocal arrangement with that other
6 state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single
7 deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable to the claimant.

8
9 **§815.185. Fraud**

10 New §815.185 explains how certain instances of fraud will be handled by the Agency.

11
12 New subsection (a) states a penalty for fraudulently obtaining benefits under §214.003 of the Act
13 shall not apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.

14
15 New subsection (b) pertains to FPUC and clarifies that the Agency and the Commission shall
16 examine the underlying payment or statement which precipitated the fraud determination when
17 examining FPUC fraud.

18
19 New subsection (c) states that under PUA, the Agency will apply the provisions of 20 C.F.R.
20 §625.14(i) when determining disqualification for fraud.

21
22 **PART III. IMPACT STATEMENTS**

23 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
24 rules will be in effect, the following statements will apply:

25
26 There are no additional estimated costs to the state and to local governments expected as a result
27 of enforcing or administering the rules.

28
29 There are no estimated cost reductions to the state and to local governments as a result of
30 enforcing or administering the rules.

31
32 There are no estimated losses or increases in revenue to the state or to local governments as a
33 result of enforcing or administering the rules.

34
35 There are no foreseeable implications relating to costs or revenue of the state or local
36 governments as a result of enforcing or administering the rules.

37
38 There are no anticipated economic costs to individuals required to comply with the rules.

39
40 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
41 communities as a result of enforcing or administering the rules.

42
43 Based on the analyses required by Texas Government Code §2001.024, the Agency has
44 determined that the requirement to repeal or amend a rule, as required by Texas Government
45 Code §2001.0045, does not apply to this rulemaking.

1 Takings Impact Assessment

2 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
3 affects private real property, in whole or in part or temporarily or permanently, in a manner that
4 requires the governmental entity to compensate the private real property owner as provided by
5 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
6 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
7 would otherwise exist in the absence of the governmental action, and is the producing cause of a
8 reduction of at least 25 percent in the market value of the affected private real property,
9 determined by comparing the market value of the property as if the governmental action is not in
10 effect and the market value of the property determined as if the governmental action is in
11 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
12 action under Texas Government Code, §2007.043. The primary purpose of this proposed
13 rulemaking action, as discussed elsewhere in this preamble, is to ensure compliance with federal
14 law with respect to extended unemployment compensation programs under the CARES Act and
15 to maximize the state's ability to take advantage of full federal funding under EUISSA.

16
17 The proposed rulemaking action will not create any additional burden on private real property.
18 The proposed rulemaking action will not affect private real property in a manner that would
19 require compensation to private real property owners under the United States Constitution or the
20 Texas Constitution. The proposal also will not affect private real property in a manner that
21 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
22 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
23 Government Code, Chapter 2007.

24
25 Government Growth Impact Statement

26 The Agency has determined that during the first five years the proposed amendments will be in
27 effect:

- 28 --the proposed amendments will not create or eliminate a government program;
- 29 --implementation of the proposed amendments will not require the creation or elimination of
- 30 employee positions;
- 31 --implementation of the proposed amendments will not require an increase or decrease in future
- 32 legislative appropriations to the Agency;
- 33 --the proposed amendments will not require an increase or decrease in fees paid to the Agency;
- 34 --the proposed amendments will not create a new regulation;
- 35 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 36 --the proposed amendments will not change the number of individuals subject to the rules; and
- 37 --the proposed amendments will not positively or adversely affect the state's economy.

38
39 Economic Impact Statement and Regulatory Flexibility Analysis

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

43
44 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
45 significant negative impact upon employment conditions in the state as a result of the rules.

1 Clay Cole, Director, Unemployment Insurance Division, and Paul Carmona, Director,
2 Regulatory Integrity Division, have determined that for each year of the first five years the rules
3 are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to
4 ensure that Texas remains eligible to receive full federal extended unemployment benefits during
5 the COVID-19 pandemic and its aftermath.

6
7 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
8 be within The Agency's legal authority to adopt.

9
10 **PART IV. COORDINATION ACTIVITIES**

11 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us.
12 Comments must be received no later than 30 days from the date this proposal is published in the
13 *Texas Register*.

14
15 The rules are proposed under Texas Labor Code §301.0015(a)(6) which provides the Agency
16 with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective
17 administration of Agency services and activities.

18
19 The proposed rules affect Texas Labor Code, Title 4.

1 (D) A notification is not adequate if it provides only a general conclusion
2 without substantiating facts. A general statement that a worker has been
3 discharged for misconduct connected with the work is inadequate. The
4 allegation may be supported by a summary of the events, which may
5 include facts documenting the specific reason for the worker's discharge,
6 such as, but not limited to:

7
8 (i) policies or procedures;

9
10 (ii) warnings;

11
12 (iii) performance reviews;

13
14 (iv) attendance records;

15
16 (v) complaints; and

17
18 (vi) witness statements.
19

20 (4) Agency--The unit of state government that is presided over by the Commission
21 and under the direction of the executive director, which operates the integrated
22 workforce development system and administers the unemployment
23 compensation insurance program in this state as established under Texas Labor
24 Code, Chapter 301. It may also be referred to as the Texas Workforce
25 Commission.
26

27 (5) Appeal--A submission by a party requesting the Agency or the Commission to
28 review a determination or decision that is adverse to that party. The
29 determination or decision must be appealable and pertain to entitlement to
30 unemployment benefits; chargeback as provided in the Act, Chapter 204,
31 Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax
32 coverage or contributions or reimbursements. This definition does not grant
33 rights to a party.
34

35 (6) Base period with respect to an individual--The first four consecutive completed
36 calendar quarters within the last five completed calendar quarters immediately
37 preceding the first day of the individual's benefit year, or any other alternate
38 base period as allowed by the Act.
39

40 (7) Benefit period--The period of seven consecutive calendar days, ending at
41 midnight on Saturday, with respect to which entitlement to benefits is claimed,
42 measured, computed, or determined.
43

44 (8) Benefit wage credits--Wages used to determine an individual's monetary
45 eligibility for benefits. Benefit wage credits consist of those wages an
46 individual received for employment from an employer during the individual's

1 base period as well as any wages ordered to be paid to an individual by a final
2 Commission order, pursuant to its authority under Texas Labor Code, Chapter
3 61. Benefit wage credits awarded by a final Commission order that were due to
4 be paid to the individual by an employer during the individual's base period
5 shall be credited to the quarter in which the wages were originally due to be
6 paid.
7

8 (9) Board--Local Workforce Development Board created pursuant to Texas
9 Government Code §2308.253 and certified by the Governor pursuant to Texas
10 Government Code §2308.261. This includes a Board when functioning as the
11 Local Workforce Investment Board as described in the Workforce Investment
12 Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth
13 Council, as provided for under the Workforce Investment Act §117(i) (also
14 referred to as an LWDB).
15

16 (10) Commission--The three-member body of governance composed of Governor-
17 appointed members in which there is one representative of labor, one
18 representative of employers, and one representative of the public as established
19 in Texas Labor Code §301.002, which includes the three-member governing
20 body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings
21 involving unemployment insurance issues regarding tax coverage,
22 contributions or reimbursements.
23

24 (11) Day--A calendar day.
25

26 (12) Landman--An individual who is qualified to do field work in the purchasing of
27 right-of-way and leases of mineral interests, record searches, and related real
28 property title determinations, and who is primarily engaged in performing the
29 field work.
30

31 (13) Person--May include a corporation, organization, government or governmental
32 subdivision or agency, business trust, estate, trust, partnership, association, and
33 any other legal entity.
34

35 (14) Places accessible--Locations in which an employer shall provide required
36 notices to an employee as provided in the Act, Chapter 208. This includes:
37

38 (A) Notices providing general information about filing a claim for
39 unemployment benefits shall be displayed in a manner reasonably
40 calculated to be encountered by all employees; and
41

42 (B) Upon separation from employment, an employer shall provide an
43 employee individual notice of general information about filing a claim
44 for unemployment benefits as set out in the printed notice referenced in
45 §208.001(b) of the Act. As the notice is provided directly to the

1 individual, the employer has significant flexibility in how this
2 information may be made known. Such information may be provided:

3
4 (i) in a paper format, including by mail or with separation paperwork;

5
6 (ii) by email;

7
8 (iii) by text; or

9
10 (iv) by other means reasonably calculated to ensure the individual
11 receives the required notification.

12
13 ~~(15)~~ Reopened claim--The first claim filed following a break in claim series
14 during a benefit year which was caused by other than intervening employment,
15 i.e., illness, disqualification, unavailability, or failure to report for any reason
16 other than job attachment. The reopened claim reopens a claim series and is
17 not a payable claim since it is not a claim for seven days of compensable
18 unemployment.

19
20 ~~(16)~~ Week--A period of seven consecutive calendar days ending at midnight on
21 Saturday.

22
23
24 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**
25

26 **§815.12. Waiver of Repayment and Recovery of Federal Extended Unemployment**
27 **Compensation~~Temporary Extended Unemployment Compensation~~ Overpayments.**

28 (a) When conforming with an applicable federal extended unemployment compensation
29 program, this section implements ~~the Temporary Extended Unemployment~~
30 ~~Compensation (TEUC)~~ waiver of repayment requirements program by setting out the
31 process that the Agency and Commission shall use to determine whether to waive the
32 repayment and recovery of non-fraudulent overpayments. -The terms repayment and
33 recovery will be referred to as repayment in this section, and ~~Temporary Extended~~
34 ~~Unemployment Compensation~~the federal extended unemployment compensation
35 overpayment will be referred to as overpayment.

36 (b) When a decision of the Agency or Commission results in ~~an~~ federal extended
37 unemployment compensation overpayment, the Agency or Commission will also
38 determine whether the overpayment will be waived.~~an appealable determination and~~
39 ~~a request for waiver of repayment of an overpayment are mailed to the claimant.~~

40 (c) A claimant may appeal the underlying issue that created the~~an~~ overpayment
41 determination pursuant to the provisions of Chapter 212 of the Act and the
42 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals
43 from Determinations), §815.17 of this chapter (relating to Appeals to the

1 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
2 for Both Appeal Stages).

3 (d) A claimant may also appeal a denial of a request to waive the repayment of an
4 overpayment in the same manner as stated in subsection (c) of this section.~~A~~
5 ~~claimant's written request for waiver of repayment of an overpayment must be filed~~
6 ~~within 14 days of the date a request to waive the repayment of an overpayment~~
7 ~~notification is mailed by the Agency. The waiver request must be filed in~~
8 ~~accordance with §815.16(1)(A) of this chapter (relating to Appeals to Appeal~~
9 ~~Tribunals from Determinations) or mailed to the address on the request form.~~

10 (e) The Agency or Commission will deny a request to waive the repayment of a non-
11 fraudulent overpayment if it determines that:

12 (1) the payment of ~~FEUC~~ the federal extended unemployment compensation
13 benefits is the fault of the claimant, or

14 (2) the repayment is not contrary to equity and good conscience.

15 (f) The Agency or Commission will waive the repayment of a non-fraudulent
16 overpayment if it determines that:

17 (1) the payment of ~~FEUC~~ the federal extended unemployment compensation
18 benefits is not the fault of the claimant, and

19 (2) the repayment is contrary to equity and good conscience.

20 (g) In determining whether fault exists, the Agency or Commission shall consider the
21 following:

22 (1) whether a material statement or representation was made by the claimant in
23 connection with the application for the federal extended unemployment
24 compensation ~~FEUC~~ that resulted in an overpayment, and whether the
25 claimant knew or should have known that the statement or representation was
26 inaccurate;

27 (2) whether the claimant failed or caused another to fail to disclose a material fact,
28 in connection with an application for the federal extended unemployment
29 compensation ~~FEUC~~ that resulted in an overpayment, and whether the
30 claimant knew or should have known that the fact was material;

31 (3) whether the claimant knew or could have been expected to know that the
32 claimant was not entitled to the federal extended unemployment compensation
33 ~~the FEUC~~ payment; and

34 (4) whether, for any other reason, the overpayment resulted directly or indirectly,
35 and partially or totally, from any act or omission of the claimant or of which

1 the claimant had knowledge, and which was erroneous or inaccurate or
2 otherwise wrong.

3 (h) In determining whether equity and good conscience exists, the Agency or
4 Commission shall consider the following factors:

5 (1) whether the overpayment is the result of a decision on appeal;

6 (2) whether the Agency gave notice to the claimant that the claimant may be
7 required to repay the overpayment in the event of a reversal of [the federal](#)
8 [extended unemployment compensation](#) ~~a TEUC~~-eligibility determination on
9 appeal; and

10 (3) whether repayment of [the federal extended unemployment compensation](#) ~~the~~
11 ~~TEUC~~-overpayment will cause financial hardship to the claimant.

12 ~~(i) The Commission has determined that requiring the claimant to repay a TEUC~~
13 ~~overpayment will cause financial hardship to the claimant, because in order to~~
14 ~~receive TEUC benefits, the claimant had to have been unemployed for an extended~~
15 ~~period of time.~~

16 ~~(j) A claimant may appeal a denial of a request to waive the repayment of an~~
17 ~~overpayment pursuant to subsection (c) of this Section.~~

18 ~~(k)~~ (i) Hearings under this ~~Section~~ section will be conducted in a fair and impartial manner
19 in accordance with the provisions of §815.15 of this chapter (relating to Parties with
20 Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals
21 from Determinations), §815.17 of this chapter (relating to Appeals to the
22 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
23 for Both Appeal Stages), except to the extent that the sections are clearly
24 inapplicable.

25 (j) For the purposes of this section, a federal extended unemployment compensation
26 program is an unemployment compensation program enacted by Congress that
27 provides additional federally funded benefits. It does not include Extended Benefits
28 under Subchapter F of this chapter or Chapter 209 of the Act.

29
30
31 ~~§815.29. Coordination of Emergency Unemployment Compensation with Regular~~
32 ~~Compensation.~~

33 ~~(a) The Commission shall establish a new benefit year, but defer the payment of regular~~
34 ~~compensation with respect to that new benefit year until exhaustion of all emergency~~
35 ~~unemployment compensation payable with respect to the prior benefit year if the~~
36 ~~individual's weekly benefit amount of regular compensation in the new benefit year~~

1 ~~is at least \$100 or 25 percent less than the individual's weekly benefit amount in the~~
2 ~~immediately preceding benefit year.~~

3
4 ~~(b) This section continues in effect as long as the provisions of P.L. 111-205 §3, or any~~
5 ~~amendments thereto, remain in effect. At such time that these federal provisions are~~
6 ~~no longer in effect, this section is repealed.~~
7

8
9 **SUBCHAPTER F. EXTENDED BENEFITS**

10
11 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**

12 (a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is
13 available, a week is a state "on" indicator week if:

14 (1) the average rate of total unemployment in Texas (seasonally adjusted), as
15 determined by the U.S. Secretary of Labor, for the period consisting of the
16 most recent three months for which data for all states are published before the
17 close of such week equals or exceeds 6.5 percent; and

18 (2) the average rate of total unemployment in Texas (seasonally adjusted), as
19 determined by the U.S. Secretary of Labor, for the three-month period referred
20 to in paragraph (1) of this subsection, equals or exceeds 110 percent of such
21 average rate for either, or both, of the corresponding three-month periods
22 ending in the two preceding calendar years.

23 (b) There is a state "off" indicator for a week if either the requirements of subsection
24 (a)(1) or (a)(2) of this section are not satisfied.

25 (c) Notwithstanding this section, any week for which there would otherwise be a state
26 "on" indicator under §209.022 of the Act, shall continue to be such a week and shall
27 not be determined to be a week for which there is a state "off" indicator.

28 ~~(a) In addition to the state "on" indicator provisions for extended benefits in the Act, and~~
29 ~~with respect to weeks of unemployment beginning on or after February 17, 2009, a~~
30 ~~week is a state "on" indicator week if:~~

31 ~~-(1) the average rate of total unemployment in Texas (seasonally adjusted), as~~
32 ~~determined by the U.S. Secretary of Labor, for the period consisting of the~~
33 ~~most recent three months for which data for all states are published before the~~
34 ~~close of such week equals or exceeds 6.5 percent; and~~

35 ~~-(2) the average rate of total unemployment in Texas (seasonally adjusted), as~~
36 ~~determined by the U.S. Secretary of Labor, for the three-month period referred~~
37 ~~to in paragraph (1) of this subsection, equals or exceeds 110 percent of such~~
38 ~~average for either or both of the corresponding three-month periods ending in~~
39 ~~the two preceding calendar years.~~

1 ~~(b) With respect to compensation for weeks of unemployment beginning after the date of~~
2 ~~enactment of Tax Relief, Unemployment Insurance Reauthorization, and Job~~
3 ~~Creation Act of 2010 (P.L. 111-312) and ending on or before the date established in~~
4 ~~federal law permitting this provision, a week is a state "on" indicator week if:~~

5 ~~–(1) the average rate of total unemployment in Texas (seasonally adjusted), as~~
6 ~~determined by the U.S. Secretary of Labor, for the period consisting of the~~
7 ~~most recent three months for which data for all states are published before the~~
8 ~~close of such week equals or exceeds 6.5 percent; and~~

9 ~~–(2) the average rate of total unemployment in Texas (seasonally adjusted), as~~
10 ~~determined by the U.S. Secretary of Labor, for the three-month period referred~~
11 ~~to in paragraph (1) of this subsection, equals or exceeds 110 percent of such~~
12 ~~average for any or all of the corresponding three-month periods ending in the~~
13 ~~three preceding calendar years.~~

14 ~~(c) In addition to the state "off" indicator provisions for extended benefits in the Act,~~
15 ~~there is a state "off" indicator for only a week if, for the period consisting of such~~
16 ~~week and the immediately preceding twelve weeks, none of the options specified in~~
17 ~~subsection (a) or (b) of this section result in an "on" indicator.~~

18 ~~(d) This section continues in effect until the week ending four weeks prior to the last~~
19 ~~week of unemployment for which 100 percent federal sharing is available under P.L.~~
20 ~~111-5, Division B, Title II, §2005(a), without regard to the extension of federal~~
21 ~~sharing for certain claims as provided under §2005(e) of such law.~~

22 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**

23 (a) If the conditions under §815.170(a) of this subchapter are met, and the average rate
24 of total unemployment equals or exceeds 8 percent, a high unemployment period
25 shall exist.

26 (b) Effective with respect to weeks beginning in a high unemployment period, the total
27 extended benefit amount payable to an eligible claimant for the claimant's eligibility
28 period is the lesser of:

29 (1) 80 percent of the total amount of regular compensation payable to the claimant
30 during the claimant's benefit year under the Act;

31 (2) 20 times the claimant's average weekly benefit amount; or

32 (3) 46 times the claimant's average weekly benefit amount, reduced by the regular
33 compensation paid, during the claimant's benefit year under the Act.

34 (c) Pursuant to §209.025 of the Act, if the full federal funding for Extended Benefits
35 provides for an additional extended benefit amount payable to an eligible claimant in
36 excess of that provided for in subsection (b) of this section, that amount shall be the
37 total extended benefit amount.

1 (a) ~~If the conditions under §815.170(a) or (b) of this subchapter are met except that the~~
2 ~~average rate of total unemployment equals or exceeds 8 percent, a high~~
3 ~~unemployment period shall exist.~~

4 (b) ~~Effective with respect to weeks beginning in a high unemployment period, the total~~
5 ~~extended benefit amount payable to an eligible individual for the individual's~~
6 ~~eligibility period is 80 percent of the total amount of regular benefits that were~~
7 ~~payable to the individual under the Act in the individual's benefit year.~~

8 (c) ~~This section applies as long as §815.170 of this subchapter is in effect.~~

9 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

10 The Agency may pay unemployment compensation benefits under other emergency
11 unemployment compensation programs that may be in effect prior to paying ~~extended~~
12 ~~Extended~~ benefits ~~Benefits~~ under this subchapter.

13
14 ~~**§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**~~
15 ~~**Benefits.**~~

16 (a) ~~Notwithstanding other eligibility provisions for extended benefits in the Act, an~~
17 ~~individual's eligibility period shall include any eligibility period provided for in P.L.~~
18 ~~111-5, Division B, Title II, §2005(b).~~

19 (b) ~~This section applies as long as §815.170 of this subchapter is in effect.~~

20 **§815.174. Financing of Extended Benefits.**

21 (a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is
22 available, the provisions of §209.082, Charges to Reimbursing Employer, and
23 §209.083, Charges to Taxed Employer, of the Act shall not apply.

24 (b) The provisions of §209.084, Charges to Governmental Employer, and §209.0845,
25 Charges to Indian Tribe, of the Act shall continue to apply.

26 (a) ~~If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5,~~
27 ~~Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act~~
28 ~~relating to taxed employers shall not apply.~~

29 (b) ~~The provisions of §209.084, regarding Charges to Governmental Employer, and~~
30 ~~§209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.~~

31 (c) ~~This section applies as long as §815.170 of this subchapter is in effect.~~

1 SUBCHAPTER G. CARES ACT PROVISIONS

2
3 §815.180. Definitions.

4 The following definitions shall apply to this subchapter:

- 5
6 (1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security
7 Act, Public Law 116 - 136; TITLE II--Assistance for American Workers,
8 Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.
9
10 (2) FPUC--refers to the Federal Pandemic Unemployment Compensation
11 provisions of §2104 of the CARES Act.
12
13 (3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of
14 §2105 of the CARES Act.
15
16 (4) PEUC--refers to the Pandemic Emergency Unemployment Compensation
17 provisions of §2107 of the CARES Act.
18
19 (5) PUA--refers to the Pandemic Unemployment Assistance provisions of §2102
20 of the CARES Act.

21
22 §815.181. Coordination of ~~Emergency Unemployment Compensation~~CARES Act
23 Programs with Regular Compensation.

- 24 (a) For a claimant who is eligible for regular compensation, including Unemployment
25 Compensation for Federal Employees (UCFE) and Unemployment Compensation
26 for Ex-servicemembers (UCX), the following order of payment applies:
27
28 (1) The claimant must first apply for and receive regular compensation. The
amount and duration of these benefits are as defined by the Act;
29
30 (2) if the claimant exhausts regular compensation, the claimant may then be
eligible to receive PEUC;
31
32 (3) if the claimant exhausts PEUC and the state has "triggered on" to Extended
33 Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible
to receive EB;
34
35 (4) if the State is not "triggered on" to EB or the claimant exhausts EB, the
36 claimant may then be eligible to receive PUA. If the State "triggers on" to EB
37 during the period in which the claimant is collecting PUA and the claimant has
38 not previously exhausted entitlement to EB for the respective benefit year, then
the claimant must stop collecting PUA and file for EB; and

1 (5) if the claimant meets the qualifications to receive Trade Readjustment
2 Allowances (TRA), such benefits will be payable after regular compensation,
3 PEUC, and EB if "triggered on", but prior to PUA.

4 (b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA,
5 and who meets the federal requirements, the claimant may be eligible to collect
6 PUA.

7 (c) FPUC provides for additional compensation to a claimant collecting regular
8 compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the
9 Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive
10 FPUC payments concurrently with payments under these programs. This applies for
11 the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020
12 unless subsequently amended by federal law.

13 ~~(a) The Commission shall establish a new benefit year, but defer the payment of regular~~
14 ~~compensation with respect to that new benefit year until exhaustion of all emergency~~
15 ~~unemployment compensation payable with respect to the prior benefit year if the~~
16 ~~individual's weekly benefit amount of regular compensation in the new benefit year~~
17 ~~is at least \$100 or 25 percent less than the individual's weekly benefit amount in the~~
18 ~~immediately preceding benefit year.~~

19
20 ~~(b) This section continues in effect as long as the provisions of P.L. 111 205 §3, or any~~
21 ~~amendments thereto, remain in effect. At such time that these federal provisions are~~
22 ~~no longer in effect, this section is repealed.~~

23
24 **§815.182. Title Appeals.**

25
26 (a) A claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA determination
27 pursuant to the provisions and timeframes of Chapter 212 of the Act and the
28 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals
29 from Determinations), §815.17 of this chapter (relating to Appeals to the
30 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
31 for Both Appeal Stages).

32 (b) An employer is not a "party of interest", pursuant to §815.15(c) of this chapter
33 (relating to Parties with Appeal Rights), to a FPUC, FRWW, PEUC, or PUA
34 determination and therefore does not have appeal rights. An employer may appear at
35 a FPUC, FRWW, PEUC, or PUA hearing to offer evidence when appropriate.

36
37 (c) When considering an appeal involving FPUC, the Appeal Tribunal and Commission
38 shall look to the merits of the denial of the underlying benefit when determining
39 eligibility for FPUC payments.

40
41 **§815.183. Waiver.**
42

1 (a) FPUC, the FRWW, and PEUC are federal extended unemployment compensation
2 programs and therefore subject to §815.12 of this chapter (relating to Waiver of
3 Repayment and Recovery of Federal Extended Unemployment Compensation
4 Overpayments).

5 (b) PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment
6 Assistance programs regulated under Title 20, Part 625, Code of Federal
7 Regulations. Therefore, PUA does not constitute a federal extended unemployment
8 compensation program and the waiver provisions of §815.12 of this chapter do not
9 apply.

10
11 **§815.1834. Title Overpayments.**

12
13 (a) Unless a FPUC, FRWW, or PEUC overpayment is otherwise recovered, or is
14 waived, the Agency shall, during the three-year period after the date the claimant
15 received the payment of FPUC, FRWW, or PEUC to which the claimant was not
16 entitled, recover the overpayment by deductions from any sums payable to the
17 claimant. No single deduction may exceed 50 percent of the amount otherwise
18 payable to the claimant.

19 (b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the
20 overpayment by deductions from any sums payable to the claimant. A PUA
21 overpayment may not be waived per §815.183(b) of this chapter and is not subject to
22 the three-year period limitation stated in subsection(a) of this section. No single
23 deduction may exceed 50 percent of the amount otherwise payable to the claimant.

24 (c) If a claimant has an unemployment benefits overpayment with an appropriate agency
25 in another state, and the Agency has a reciprocal arrangement with that other state
26 agency under §211.004 of the Act, the Agency shall deduct 50 percent per each
27 single deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable
28 to the claimant.

29
30 **§815.185. Fraud.**

31
32 (a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not
33 apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.

34 (b) The Agency and the Commission shall examine the underlying payment or statement
35 which precipitated the fraud determination when examining FPUC fraud.

36
37 (c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R.
38 §625.14(i) shall apply.