

The above considerations apply equally to any major disaster. They led the Department to conclude and instruct state agencies that workers and self-employed individuals whose work site, for example, is within the presidentially-declared major disaster area yet outside the immediate disaster site, and who no longer have a job because the federal government either closed or took over the work site in immediate response to the major disaster, are potentially eligible for DUA. The interim final rule included only employees and self-employed individuals at facilities closed by the federal government in the major disaster area. (For further explanation of this issue, see "Other Changes to the Final Rule" below.) Examples of eligible individuals in the case of an airport shutdown in the major disaster area included airport employees, owners and employees of restaurants and shops located in airport terminal buildings, and workers or service providers for these and other facilities where the above conditions were met. However, workers at other airports not closed by the federal government were not considered eligible for DUA under the interim final rule. Individuals potentially eligible for DUA also included employees and self-employed individuals who could not perform services or get to their workplace not only because of physical damage to their place of employment but because a federal agency, such as FEMA, took over such site for disaster administration purposes. Similarly, because the federal government could, as an immediate emergency response to the major disaster, close certain facilities such as bridges or tunnels in the major disaster area, employees of those facilities could, therefore, be potentially eligible for DUA.

As noted above, the Department also concluded in the interim final rule that an employee or self-employed individual could be eligible for DUA if the entity in the major disaster area was closed by the government in immediate response to the major disaster or the major disaster caused physical damage to or destruction of an entity in the major disaster area which, before the major disaster, provided at least a majority of the employer's or self-employed individual's revenue or income. Where less than a majority of the employer's or self-employed individual's revenue or income came from that entity, the link to the unemployment was viewed as too tenuous to be considered direct under the regulations. Just as this test would

be employed to determine whether employees of suppliers of goods or services to entities physically damaged by the major disaster may be eligible for DUA, so too would that analysis be applicable to employees of suppliers of goods or services to other entities closed or taken over by the federal government in immediate response to the major disaster. Thus, if one of those entities provided at least a majority of the revenue or income of that employer or self-employed individual, the employees of that business or that self-employed individual could be eligible for DUA.

Where it could not be established that at least a majority of the revenue or income of a business or self-employed individual was dependent upon providing goods or services to these entities, DUA eligibility must be denied. For example, a taxicab driver would be potentially eligible for DUA where a majority of his or her business depended on providing transportation services between points which included areas cordoned off because of the physical damage of the major disaster or because facilities were closed or commandeered by the federal government. On the other hand, DUA eligibility should be denied a taxicab driver who cannot establish that a majority of his or her livelihood depended on providing transportation services between points which include areas cordoned off because of either the physical damage of the major disaster or the closing or commandeering of the facilities in the major disaster area by the federal government.

Further, the interim final rule said that DUA is payable only for those weeks of unemployment during the disaster assistance period that continue to be the direct result of the major disaster. Therefore, if the state agency finds that an eligible DUA applicant's unemployment can no longer be directly attributed to the major disaster, the applicant is no longer unemployed as a direct result of the disaster and is no longer eligible for DUA.

### III. Comments on the Interim Final Rule

The Department received comments on the interim final rule from a furloughed airline worker, three state workforce agencies (Iowa, Kansas, and New Jersey), three labor organizations, and five employee advocacy organizations. The three labor organizations were the American Federation of State, County, and Municipal Employees (AFSCME), the American Federation of Labor and Congress of Industrial Organizations

(AFL-CIO), and the Service Employees International Union (SEIU). The five employee advocacy organizations included the Urban Justice Center, New York City, on behalf of the Chinese Staff and Worker's Association; the National Employment Law Project, New York City and Oakland, California; the Greater Boston Legal Services; the New York Taxi Workers' Alliance, New York City; and the Workforce Organizations for Regional Collaboration, Arlington, Virginia. In addition, a state senator from New York submitted a letter in support of the comments of the National Employment Law Project. The Department discusses and responds below only to those comments received that were relevant to the regulatory section we added in the interim final rule, § 625.5(c).

The furloughed airline worker submitted a comment requesting an amendment to the interim final rule to include coverage of employees of airlines affected by the government-imposed restrictions on air traffic. The Department realizes that the airline industry, as well as this individual, suffered economically as a result of the "ripple effect" the September 11 attacks had on the overall economy. While the Department is sympathetic to the effect the terrorist attacks had on the airline industry and others, the interim final rule was promulgated to specifically define the phrase "unemployment as a direct result of the major disaster," as used in the existing DUA regulations. The Department never intended to define the phrase to include individuals unemployed due to an economic "ripple effect" of a major disaster, as this would inappropriately broaden the rule's scope to include individuals indirectly affected by the disaster. In drafting the interim final rule, the Department did take into account the fact that certain individuals and businesses located outside the disaster area could be severely affected by the loss of economic activity within the disaster area. Therefore, the phrase "unemployment as a direct result of the major disaster" is defined to include self-employed individuals, as well as employees of businesses, suffering from unemployment because their employers or businesses received, before the disaster, more than fifty percent of revenues from businesses damaged, destroyed, or closed by the government within the major disaster area. The regulation, however, was never intended to cover all of the possible economic effects of a disaster.