

EMPLOYMENT DEVELOPMENT DEPARTMENT

**Amendment of Sections 2706-1, 2706-2,
and Adoption of Section 2706-8 of
Title 22, California Code of Regulations**

**IDENTITY AND WAGE VERIFICATION FOR STATE DISABILITY
INSURANCE BENEFITS**

Final Statement of Reasons

BACKGROUND:

The State Disability Insurance (SDI) program was established in 1946 to provide a partial wage replacement benefit to eligible workers in California who were unable to work due to a non-work related illness or injury. In addition, the SDI program provides for Family Temporary Disability Insurance (FTDI), which is a benefit that provides partial wage replacement to eligible workers who take time off work to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child.

Currently, the California Code of Regulations (CCR) stipulates that fraudulent claims shall be denied payment for both SDI and FTDI claims. Section 2675 (a) of the California Unemployment Insurance Code (CUIC) provides the Director of the Employment Development Department (Department) the authority to stop payment on any SDI claim in which a false statement was made. Section 2675-1 (b) of the CCR clarifies this provision by stating that payments may be stopped from suspected fraudulent claims to maintain the solvency of the Disability Fund. However, there is no authority for the Department to require additional identity and wage information from a claimant whose identity is in question for purposes of determining eligibility for SDI benefits. Establishing authority to verify a claimant's identity and wages would assist the Department in determining who the true base wage earner is in cases where the identity of the claimant is in question. This is necessary in cases where identity theft has occurred or when multiple people are using the same Social Security Number (SSN) for employment purposes.

In recent years, the Department has experienced a significant increase in claims being flagged with identification alerts due to having SSN discrepancies and/or reflecting use by more than one person.

Based on SDI Branch data

- In 2005, 5,260 claims were flagged.
- In 2006, 10,276 claims were flagged.
- In 2007, 23,303 claims were flagged.
- In 2008, 11,030 claims were flagged.

Regulations currently provide the Department with the authority to verify claimant identity, relating to any Unemployment Insurance (UI) claim, by requiring claimants to submit verifying documents. The UI Branch also has a process for verifying wages and employers on questionable UI claims. The UI Branch requires individuals who file UI claims and have multiple employers, to have a minimum number of those employers listed on the claim form, otherwise the claim may be investigated. The SDI program does not have similar regulations to provide authority to verify a claimant's identity/wages.

The proposed regulations would provide the Department the authority to request additional documentation of an employee's wages if the Department suspects the wages may have been earned by someone other than the claimant. This provides the means for the Department to be able to verify that base period wages were in fact earned by the claimant requesting the benefits.

NECESSITY:

CUIC sections 305 and 306 provide the Director of the Department authority to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under CUIC sections 2625, 2706, and 2708, SDI benefits are payable from the Disability Fund to individuals who file claims for benefits in accordance with authorized regulations and who are eligible to receive such benefit payments.

The addition of CCR section 2706-8 and the amendments to CCR sections 2706-1 and 2706-2 will allow the Department to verify a claimant's identity on a claim where the identity of the claimant/base wage earner is not certain. It will allow the Department to notify the claimant that the information available to the Department indicates that the SSN may not belong to the claimant, is not a valid number, was never issued by the Social Security Administration, or that wages shown in the base period of the claim may not belong to the claimant. The proposed amendments would add "proof of wages earned," and "driver license" to the list of items the Department may require for verification of identity and wages. These clarifications would allow the Department to verify identity and wages and provides the means necessary to maintain the integrity of the SDI program.

Current regulatory language limits instances by which the Department can require a claimant to provide additional information needed to establish his/her

identity. Establishing the identity of the person collecting or attempting to collect SDI or FTDI benefits is crucial to detecting and preventing fraud. New regulatory language is needed to authorize the Department to act on credible information from a variety of sources in order to investigate potential fraud and stop benefit payments to individuals who are not the true owner of the identity and wages.

CCR sections 2706-1 and 2706-2 are amended to provide the Department the authority to:

- Require additional information to verify a claimant's identity if there is a discrepancy as to whether the true base wage earner is the person filing the claim.
- Verify a claimant's annual statement from the Social Security Administration.

CCR section 2706-8 is added to provide the Department the authority to:

- Verify the identity of the claimant by requiring the claimant to submit additional proof to verify wages earned.
- Grant or deny benefits based on additional information required by claimants to verify wages and identity.
- Allow SDI representatives to competently defend the Department at California Unemployment Insurance Appeals Board hearings.

The proposed regulatory action to CCR, Title 22, is as follows:

Section 2706-1. Filing of First Claim for Disability Benefits.

The provisions of Title 22, section 2706-1 of the CCR delineate the required claimant information to be provided on a properly completed claim form for SDI benefits. The proposed amendment to section 2706-1 would provide the Department with the authority to verify the authenticity of the SSN that the claimant provides on his or her claim form. It also would add a driver license number to the list of requirements that the claimant must provide on the first or continued claim form. In order to incorporate these new requirements into the current regulations, various paragraphs within subdivision (e) were renumbered accordingly:

Subdivision (e)(2) - The current language in this subdivision provides the Department with the authority to require a claimant to provide his or her SSN on any first or continued SDI claim in order for the claim to be valid. The proposed regulation amendment would require the claimant to list any additional SSNs the claimant may be known by or may have worked under. It also states that this information will be subject to verification under certain circumstances. The new language would establish the Department's authority to verify the identity of the

claimant in SDI claims where the SSN may be compromised or the identity of the claimant is in question.

Subdivision (e)(2)(A) - The proposed regulation amendment would give the Department the authority to verify the SSN as the one belonging to the claimant. This language is needed so that in cases where the SSN on the claim form does not match the claimant's identification information, the claimant may still be able to verify his/her identity for the purposes of acquiring SDI benefits.

Subdivision (e)(2)(B) - The proposed regulation amendment would specify the methods the claimant must employ to verify ownership of an SSN for identification verification requirements. By verifying ownership of an SSN provided on a claim form, the Department will be able to mitigate fraud thus ensuring the integrity of the SDI program.

Subdivision (e)(6) - The proposed regulation amendment would stipulate that the Department requires claimants to provide a driver license number or identification card number on the first or continued claim form, provided that the claimant possesses an identification or driver license card, issued by a local, state, or federal agency, or a foreign government. This provision provides the Department the discretion to require disclosure of a driver license or identification card number under certain circumstances. Claimants who do not possess or are unable to obtain a driver license or identification card issued by a local, state, or federal agency, or a foreign government, are not required to provide a driver license or identification card number on the first or continued claim form. Failure to disclose an identification or driver license number does not automatically preclude a claimant from being eligible for benefits. This provides the Department an additional form of identification verification which would mitigate the potential for identity fraud in SDI claims.

Subdivision (e)(14) – The proposed regulation amendment would stipulate that the Department does not accept facts about a claimant's disability from a vocational rehabilitation counselor because the vocational rehabilitation counselor program has been discontinued. Since section 4635 of the Labor Code, which outlined vocational rehabilitation, has been removed, any Title 22 reference to this obsolete program should also be removed. This will ensure consistency between Title 22 and the Labor Code.

Section 2706-2. Claim for Family Temporary Disability Insurance Benefits-Filing and Contents.

The provisions of Title 22, section 2706-2 of the CCR delineate the required claimant information to be provided on a properly completed claim form for FTDI benefits. The proposed amendment to section 2706-2 would provide the Department with the authority to verify the authenticity of the SSN that the claimant provides on his or her claim form. A driver license number is added to

the list of requirements that the claimant must provide on the first or continued claim form. It also provides that the date of guardianship placement be included when a claimant is completing a bonding certification, when applicable. The Department has determined that legal guardians are eligible for bonding benefits, therefore, including them in the regulations allows the Department to verify their eligibility when applying for bonding benefits. In order to incorporate these new requirements into the current regulations, various paragraphs within subdivision (d) were renumbered accordingly:

Subdivision (d)(2) - The current language in this subdivision provides the Department with the authority to require a claimant to provide his or her SSN on any first or continued FTDI claim in order for the claim to be valid. The proposed regulation amendment to this subdivision would require the claimant to list any additional SSNs the claimant may be known by or may have worked under. It also states that this information will be subject to verification under certain conditions. This new language is needed to provide the Department the authority to verify the identity of the claimant in FTDI claims where the SSN may be compromised or the identity of the claimant is in question.

Subdivision (d)(2)(A) - The proposed regulation amendment would provide the Department with the authority to verify a claimant's SSN under specified circumstances. This is necessary to identify the true base wage earner for purposes of determining eligibility for FTDI benefits. This language is needed so that in cases where the SSN provided on the claim form does not match the claimant's identification information, the claimant may still be able to verify his/her identity for the purposes of obtaining FTDI benefits.

Subdivision (d)(2)(B) - The proposed regulation would give the Department additional authority to require identification verification from the claimant. The proposed regulation amendment specifies the methods the claimant must employ to verify ownership of an SSN for identification verification requirements. This is beneficial to the Department because it will verify the authenticity of an SSN used on a FTDI claim. By verifying ownership of an SSN on a claim form, the Department will be able to mitigate fraud thus ensuring the integrity of the FTDI program.

Subdivision (d)(6) - The proposed regulation amendment would stipulate that the Department requires claimants to provide a driver license number or identification card number issued by a local, state, or federal agency, or a foreign government on the first or continued claim form, provided that the claimant possesses an identification or driver license card, issued by a local, state, or federal agency, or a foreign government. This provision provides the Department the discretion to require disclosure of a driver license or identification card number under certain circumstances. Claimants who do not possess or are unable to obtain a driver license or identification card issued by a local, state, or federal agency, or foreign government are not required to provide a driver license or identification card

number on the first or continued claim form. Failure to disclose an identification or driver license number does not automatically preclude a claimant from being eligible for benefits. This provides the Department an additional form of identification verification which would mitigate the potential for identity fraud in FTDI claims. This would ensure the integrity of the FTDI program.

Subdivision (d)(17) - This subdivision previously stated that the Department may require additional information to verify identity. The proposed regulation amendment would clarify that the Department may only require additional verifying information that is “within the scope of eligibility requirements.” Adding this language limits the type of information the Department can require of a claimant to that which is pertinent to establishing eligibility for FTDI benefits. Adding this language also makes this subdivision consistent with section 2706-1(f)(11) of the CCR.

Subdivision (e)(3) - This subdivision currently states that a date of placement is required in cases only pertaining to adoption and foster care bonding claims. The proposed regulation amendment would stipulate that a claimant shall specify the date a child was placed into his or her guardianship on the claim form when applying for FTDI bonding benefits. This change is necessary because the Department has determined that section 3302 of the CUIIC defines “parent” to include a legal guardian, and defines “child” to include legal ward, thus providing sufficient authority for legal guardians to receive FTDI bonding benefits. Adding the guardianship placement date to the requirements of the claim form incorporates the legal guardian category into the appropriate claim application and allows eligible individuals the opportunity to apply for FTDI benefits.

Subdivision (f)(2)(M) - This subdivision currently states that the Department may require additional information to verify identity. The proposed regulation amendment would clarify that the Department may only require additional verifying information that is “within the scope of eligibility requirements.” Adding this language limits the verification the Department can pursue on claimant identity to that which is pertinent to FTDI benefits. Adding this language also makes this subdivision consistent with the similar provisions for SDI benefits in section 2706-1(f)(11) of the CCR.

Section 2706-8. Identity and Wage Verification for State Disability Insurance Benefits.

The provisions of Title 22, section 2706-8 of the CCR would provide definitions for various terms utilized by the Department for the purpose of administering SDI and FTDI benefits. The proposed regulation for section 2706-8 of the CCR would establish definitions that are needed to properly administer the respective programs with regard to identification verification.

Subdivision (a) - The proposed regulation for this subdivision would explain that the subsequent subdivisions would define various terms used in section 2706 of the CCR.

Subdivision (b) - The proposed regulation would add a definition for “social security number” and “social security account number” to mean a nine-digit account number issued by the Social Security Administration. The purpose of this definition is to allow the Department to establish a standard for SSNs to verify the amount of earnings a claimant earned during any given base period by using tax information. This regulation is necessary for the purpose of providing the Department the authority to verify a claimant’s SSN when the identity of a claimant is uncertain.

Subdivision (c) - The proposed regulation would add a definition for “social security number verification” to mean the claimant proving ownership of a social security number by sending the Department a copy of their social security annual statement, or by having the Social Security Administration directly submit proof of ownership to the Department. The purpose of the regulation is to allow the Department to stipulate a standard method by which the claimant will authenticate his/her SSN. This is necessary so the Department may mitigate fraud by ensuring all verifying documents come from an acceptable institution.

Subdivision (d) - The proposed regulation would add a definition for “photo identification” to mean a document containing the claimant’s first and last name, photo, and date of birth. It also specifies that it must be an official document issued by a local, state, or federal agency, or a foreign government. The purpose of this definition is to allow the Department to establish standards for what types of identifications are acceptable for purposes of verifying identity. This is necessary so the Department may mitigate fraud by ensuring all verifying documents come from an acceptable institution.

Subdivision (e) - The proposed regulation would add a definition for “date of birth verification” to mean a certified birth certificate issued by a local, state, or federal agency, or foreign government entity, or any other official certification of the claimant’s birth. The purpose of this definition is to establish a standard for what constitutes acceptable documentation to verify the date of birth of a claimant. This is necessary so the Department may mitigate fraud by ensuring all verifying documents come from an acceptable institution.

Subdivision (f) - The proposed regulation would add a definition for “address verification” to mean a document that verifies the claimant resides at that address or receives mail at that Post Office Box. This could be a utility, cable, telephone, mortgage, or insurance bill that contains the claimant’s name and residence address. The purpose of this regulation is to allow the Department to establish a standard for what constitutes acceptable documentation to verify a claimant’s

address. This is necessary so the Department may mitigate fraud by verifying the address provided on the claim form.

Subdivision (g) - The proposed regulation would add a definition for “proof of wages earned” to mean a copy of the claimant’s wage and tax statements. It may also be an income tax declaration, check stub, or pay statement that is from the base period of the claim and contains the claimant’s first and last name, SSN, the name of the employer, and the date the check or pay stub was issued. The purpose of this regulation is to allow the Department to verify that wages claimed by a claimant were in fact earned by that claimant. This is necessary because establishing a defined standard for wage verification will help the Department mitigate fraud, thus ensuring the integrity of the SDI program.

Subdivision (h) - The proposed regulation for this subdivision would explain the Department’s purpose in requiring claimants to provide the information mandated by CCR, Title 22, sections 2706-1, 2706-2, 2706-3, and 2706-6.

Subdivision (i) - The proposed regulation would delineate requirements for verifying the identity of a claimant if the criteria outlined in CCR, Title 22, sections 2706-1, 2706-2, 2706-3, and 2706-6 do not sufficiently establish the identity and wages of the claimant. This regulation stipulates that the Department may request identity and wage information from a claimant’s employer, such as dates of employment and other SSNs the individual may have used, if the Department is unable to verify a claimant’s identity and wages by other means. This is necessary in circumstances where the claimant has not provided all of the initial verifying information required by the Department but may still be eligible for SDI and FTDI benefits.

Subdivision (j) - The proposed regulation would provide the Department the authority to request an individual who claims to be the true owner of the identity to certify under penalty of perjury whether or not he/she is the individual who filed the claim. The proposed regulation would allow the Department to request information from a non-claimant whose identity and wages may have been used to file a fraudulent claim. This regulation supports the Department’s authority to seek legal recourse against an individual who would falsely use identity or wage information to attain SDI benefits. This also provides consistency with section 1326-3(c) of Title 22 of the CCR which provides the UI program the same authority.

Subdivision (k) – The proposed regulation would provide the claimant the ability to request additional time to submit verifying information requested by the Department. The proposed regulation provides the Department some discretion in determining the timeframe for the claimant to return the verifying documents establishing his/her identity. This regulation affords a claimant sufficient time to retrieve documents from a governmental entity when the entity does not provide information to the claimant in a timely manner. For example, the Social Security

Administration often exceeds the 10 days afforded to the claimant, pursuant to subdivision (l) of this section, to provide claimants with their annual statement. This is necessary to ensure the proper administration of the SDI program and also provides consistency with section 1326-3(d) of Title 22 of the CCR which provides the UI program the same authority.

Subdivision (l) - The proposed regulation would provide the Department the authority to make a final determination to grant or deny benefits if a claimant neglects to send the required information related to identity and/or wage verification and does not contact the Department to request additional time to submit the required information. This is necessary to ensure the proper administration of the SDI program.

Subdivision (m) - The proposed regulation would provide the Department the authority to adjust wage and claim information made under an individual's SSN when that individual did not file a claim. The Department establishes and identifies a claim by using an SSN, or in circumstances where an SSN is unverifiable, an Individual Tax Identification Number or Employment Client Number is utilized. This regulation provides the Department the authority to adjust claim and wage information when information is reported under an SSN that does not belong to the claimant. The proposed regulation provides the Department the authority to transfer claim and wage information from a claim record that was based on an improperly used SSN to an Employment Client Number or Individual Tax Identification Number to establish a claim record for an eligible claimant. This is necessary to protect the true SSN owner and their base period wage information, and to ensure the proper administration of the SDI program.

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed regulatory action in plain English pursuant to section 11346.2(a)(1) of the Government Code.

PUBLIC NOTICE, 45-DAY WRITTEN PUBLIC COMMENT PERIOD, AND WRITTEN COMMENTS RECEIVED DURING 45-DAY PUBLIC COMMENT PERIOD:

On March 25, 2011, the Office of Administrative Law printed a public notice for this regulatory action in the California Regulatory Notice Register, and the Department posted this public notice on its Internet website. A copy of the public notice, the text of the proposed regulations, and the initial statement of reasons were mailed to everyone known to be interested in the Department's regulations.

During the 45-day written public comment period which was held from March 25, 2011 through May 9, 2011, no one requested a public hearing. However, during the comment period, the Department received two comments (the comments are

included as part of this rulemaking file at Tab No. 6). The comments are indicated below, followed by the Department's response to each comment.

Comment #1

E-mail received on May 9, 2011 from Centro Legal de la Raza, Equal Rights Advocates, Labor Project for Working Families and Legal Aid Society-Employment Law Center provided the following comment:

- The proposed verification requirements would deter undocumented workers from pursuing SDI claims by requesting supporting documentation from listed the undocumented workers' employers. The Department's "burdensome and invasive" actions would "have a chilling effect on filings by undocumented workers." Additionally, it is unknown to what extent the information obtained will be protected from disclosure beyond purposes related to the CUIIC.

Response

- The Department must ensure that the verifications are complete in order to maintain the integrity of the Disability Fund and to mitigate any potential fraud that may result from identity theft. In some instances, the Department may be unable to verify a claimant's identity and wages if the wages and a single SSN are attributed to more than one individual. In order to address claims of this nature, the addition of CCR section 2706-8 (i) is necessary to provide authority for the Department to verify the true source of the wages in question.
- Any information obtained by the Department is strictly for the purpose of SDI benefit eligibility determinations. CUIIC sections 1094 and 1095 limit the Department's use of any information obtained in its administration.

Comment #2

E-mail received on May 9, 2011 from Centro Legal de la Raza, Equal Rights Advocates, Labor Project for Working Families and Legal Aid Society-Employment Law Center provided the following comment:

- The proposed regulations will result in significant benefit delays by allowing the Department additional time to request and review new sources of information with respect to eligibility verification.

Response

- While it is understood that a claimant's need for SDI benefits are of an urgent nature, the benefits can only be awarded after a prudent and accurate investigation into their proper eligibility. The proposed verification requirements will not result in further delay. The regulations would provide a streamlined method for identity and wage verification that would be mutually beneficial to the Department as well as its claimants.
- The proposed amended regulations will better serve SDI claimants and maintain the integrity of the Disability Fund.

ECONOMIC IMPACT STATEMENT:

The Department does not anticipate this regulatory action will result in any costs to the federal government, to state government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations would clarify existing statute; make conforming regulatory changes that are consistent with UI benefit requirements; and facilitate the processing of a claim for SDI benefits with no adverse impact on individuals filing a claim for SDI benefits. The Department has determined that the proposed regulatory action will not effect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

SMALL BUSINESS IMPACT:

The proposed amendments in and of themselves will have no effect on small businesses because they do not impose any new mandates on small businesses. The amendments do not require that small businesses take any action or refrain from taking any action in regard to conducting business.

LOCAL MANDATE DETERMINATION:

The Department has determined that the proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES:

In accordance with section 11346.9(a)(4) of the Government Code, the Department has determined that no alternative considered would be more effective in carrying out the purpose for which this action was intended than the proposed regulatory action. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons than the proposed regulatory action.
