

13966, (eff 5-16-24)

**Readopt with amendment Emp 408, effective 9-27-2013 (Document #10423), to read as follows:**

Emp 408.01 Compromise. Compromise of an overpaid benefit account, which may not be fully waived under RSA 282-A:29, II, shall be considered under RSA 282-A:29, I.

Emp 408.02 Recommendation of Compromise. In response to a request to compromise an overpaid benefit account pursuant to RSA 282-A:29, I, the department shall recommend the total or partial compromise of any overpaid benefit account to the attorney general where such is determined to be in "the best interests of the state."

Emp 408.03 Notice of Acknowledgment and Mode of Hearing.

(a) Following receipt of a request for compromise, the department shall provide written notice of acknowledgment to the debtor.

(b) In the notice of acknowledgment, the debtor shall be provided with a copy of Emp 408 and given the opportunity to elect whether to have the request for compromise considered:

- (1) On the record, including any written evidence or argument the debtor may submit;
- (2) At an in-person hearing; or
- (3) By telephone hearing.

(c) Upon a failure to make the election in (b) above within 14 days of the date of the department's notice, the department shall make a determination on the record.

(d) If a debtor requests an in-person or telephonic hearing and fails to appear, the department shall deny the request for compromise.

(e) In-person hearings shall be governed by the procedures in Emp 207 except to the extent that such procedures are waived pursuant to Emp 207.06.

(f) Telephonic hearings shall be governed by the procedures in Emp 207 and Emp 202.01 (v)-(y), except to the extent that such procedures are waived pursuant to Emp 207.06.

Emp 408.04 Rebuttable Presumption.

(a) There shall be a rebuttable presumption that it is in the "best interests of the state" to compromise a non-fraud overpaid benefit account of state unemployment benefits in total if the debtor's household income is derived solely from the following sources:

- (1) Old Age Assistance;
- (2) Aid to the Permanently and Totally Disabled;
- (3) Supplemental Security Income;
- (4) Aid to the Needy Blind;
- (5) Temporary Assistance For Needy Families;
- (6) Social Security Disability Insurance;

13966, (eff 5-16-24)

(7) Social Security Retirement Benefits; or

(8) Veteran's Benefits.

(b) The presumption in (a) above shall be rebutted by evidence of one or more of the following:

(1) The claimant's economic circumstances are likely to change substantially within 2 years;

(2) The claimant owns, holds an interest, or both, in real property which is not inchoate or de minimis;

(3) The claimant owns, holds an interest, or both, which is not inchoate or de minimis, in goods, property, money, rights, and credits that is capable of being liquidated in the relatively near future without substantial loss in value, excepting such interests that are exempted from attachment and execution; or

(4) The overpayment was the result of fraud.

(c) There shall be a rebuttable presumption that it is in the "best interests of the state" to compromise any non-fraud portion of an overpaid benefit account of state unemployment insurance benefits that resulted from base period wages from a reimbursing employer, provided that the claimant provides documentation satisfactory to the department that the reimbursing employer does not object.

(d) The presumption in (c) above shall be rebutted if the department finds that there is some other reason to conclude that failing to recover the overpayment would, or could, affect:

(1) Any interested party, as defined in RSA 282-A:42, III, other than a non-objecting reimbursing employer under (c) above; or

(2) An agency or department of any state or of the federal government.

(e) If the presumption in (a) or (c) above is rebutted, the determination of whether a total or partial compromise is recommended shall be based on weighing the factors in Emp 408.05.

Emp 408.05 Totality of the Circumstances. To the extent that an overpayment is not compromised pursuant to Emp 408.04 above, the commissioner shall consider the factors in Emp 408.06 on a totality of the circumstances basis, and the presence or absence of one or more of the factors shall not be controlling.

Emp 408.06 Factors to be Considered. Factors to be considered in determining whether the total or partial compromise of an overpaid benefit account is in "the best interests of the state" for purposes of RSA 282-A:29, I shall include whether:

(a) The debtor has made an offer of partial payment that is reasonable relative to the amount of the debt and the debtor's ability to make total or partial payment over the course of a reasonable period of time;

(b) The debtor made payments on the overpayment as promptly as the debtor was financially able;

(c) The debtor agreed to a payment schedule and amount consistent with the debtor's ability to pay;

(d) The debtor made payments substantially in compliance with any payment schedule or court order;

13966, (eff 5-16-24)

(e) The debtor contacted the department if any payments were going to be late or less than the agreed amount;

(f) The debtor provided any financial affidavit or other financial information that was needed by the department to determine the debtor's ability to pay;

(g) The debtor kept the department informed of the debtor's telephone numbers, sources of income, physical addresses, and mailing addresses;

(h) The debtor promptly responded to communications from the department;

(i) The debtor assured that checks were not returned due to insufficient funds;

(j) The debtor cooperated so that it was not necessary for the department to take legal action to collect the overpayment;

(k) The debtor was not found overpaid as a result of fraud;

(l) The debtor was not found to have been with fault in the creation of the overpayment pursuant to RSA 282-A:165, II and Emp 502.03;

(m) The debtor was found to have been with fault in (k), but the nature of the debtor's fault was mere negligence, rather than omissions or commissions which were unreasonable, grossly negligent, reckless, knowing, or willful;

(n) The debtor, if currently unable to make payment, is not likely to have a substantial improvement in ability to pay within 12 months;

(o) The debtor has income or assets which, after considering total household income, are in excess of those required for the necessities for the debtor and the debtor's immediate family residing in the same household;

(p) The debtor has income or assets which are not exempt from garnishment, levy, or execution under federal or state law;

(q) The debtor has an ability to pay that is substantially limited when compared to the amount of the debt;

(r) The debtor has a partial or entire overpayment benefit account that resulted from payments from a reimbursing employer, and the reimbursing employer does not object to compromise;

(s) The debtor has demonstrated that the debtor currently intends to either refinance the debtor's mortgage or obtain a reverse mortgage, and a lien by the department against the debtor's primary residence would prevent the debtor from doing so;

(t) The debtor has any other financial limitations, has acted in any other way that positively demonstrated the debtor's willingness to substantially comply with the department's collection efforts and benefit eligibility determination requirements or has demonstrated other actual harm would result from collection efforts or the failure to grant a partial or total compromise; and

(u) The department finds that the total or partial compromise of the overpaid benefit account would, or could affect:

13966, (eff 5-16-24)

- (1) Any interested party, as defined in RSA 282-A:42, III, other than a non-objecting reimbursing employer under Emp 408.04 (c), or
- (2) An agency or department of any state or the federal government.

Emp 408.07 Injured Spouse Allocation.

(a) If the overpayment, which is the subject of the request for compromise, qualifies as an “overpayment debt” as defined in Emp 409.02 (i), the department shall not consider a request for compromise until the individual has demonstrated through documentation the individual’s tax filing status for the tax year in question for which a tax refund offset may be, or has been, certified by the department to satisfy a debt owed by the individual.

(b) If the individual’s tax filing status is such that another individual would be entitled to file a request for injured spouse allocation with the IRS in order to claim a portion of the tax refund, the department shall require, prior to considering the request for compromise, the injured spouse allocation process first be exhausted with the IRS.

(c) If following exhaustion of the injured spouse allocation process, the individual demonstrates through documentation that the injured spouse allocation request has been rejected by the IRS, the department shall then consider a request for compromise.

Emp 408.08 Notice of Commissioner’s Decision on Request to Compromise. The department shall provide the debtor with written notice of the department’s decision on the request for compromise including the reasons for the decision. The notice shall inform the debtor of the debtor’s right to request reconsideration by the commissioner, and the debtor’s right to request compromise again in the future. A new request for compromise shall be considered upon demonstration by the debtor that there has been a substantial change in circumstances.

Emp 408.09 Request for Reconsideration.

(a) If the department makes a recommendation to deny the request for compromise in whole or in part, the debtor may submit a request for reconsideration by the commissioner within 14 days of the date of the notice of the department’s decision. The commissioner’s review shall be on the record.

(b) Requests for reconsideration submitted later than 14 days of the date of the notice of the commissioner’s recommendation shall not be considered.

(c) If reconsideration is requested, the commissioner shall designate a person to participate in the commissioner’s review of a debtor’s request who shall be different than any person who was designated to make the initial recommendation on a request for compromise.

Emp 408.10 The Collection Process and Requests for Compromise. An individual’s request for compromise shall not stay the collection process including, without limitation, the offset of federal tax refund payments under Emp 409.

**APPENDIX**

13966, (eff 5-16-24)

<b>Rule Number</b>	<b>State Statute / Federal Regulation Implemented</b>
Emp 408	RSA 282-A:29, I
Emp 408.06(k)-(l)	RSA 282-A:164; RSA 282-A:165,II
Emp 408.07	31 C.F.R. 285.8 (f)-(g)