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Part IV

Department of Labor

Employment and Training Administration

20 CFR Parts 640 and 650
Federal-State Unemployment
Compensation Program; Unemployment
Insurance Performance System; Proposed
Rule

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Parts 602, 640, and 650**

RIN 1205-AB10

**Federal-State Unemployment
Compensation Program;
Unemployment Insurance Performance
System****AGENCY:** Employment and Training Administration, Labor.**ACTION:** Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this notice is to obtain comments prior to proposing a streamlined regulation regarding a new, more unified system for improving Unemployment Insurance (UI) operational performance. The system, called UI Performs, responds to the call of the Vice President's National Performance Review for a more unified approach to improving UI performance. The broad goal of UI Performs is to improve continuously the quality of services to the UI system's ultimate customers (claimants and employers). It does this by giving both Federal and States partners a more unified performance management system, enabling them to manage more effectively and plan more innovatively.

DATES: The Department invites written comments on this notice. Comments are to be submitted by March 17, 1997.

ADDRESSES: Submit written comments to Mary Ann Wyrsh, Director; Unemployment Insurance Service, Employment and Training Administration (ETA); U.S. Department of Labor; 200 Constitution Avenue, N.W., Room S-4231; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Burman Skrable, Unemployment Insurance Service, ETA; U.S. Department of Labor; 200 Constitution Avenue, N.W., Room S-4522; Washington, DC 20210. Phone (202) 219-5922 (this is not a toll-free number); fax (202) 219-8506.

SUPPLEMENTARY INFORMATION:

1. Background

The legislative framework for the Federal-State UI program reserved many decisions to the States, such as specifying most criteria for eligibility and establishing most parameters of the tax structure. However, it gave the Secretary of Labor responsibility for ensuring compliance with minimum Federal guidelines and for assuring

proper and efficient administration of the system. The Secretary's role in carrying out this responsibility has been interpreted to include the assurance of certain minimum levels of operational performance. Over time, the U.S. Department of Labor (DOL) increasingly exercised the Secretary's responsibilities for performance oversight by measuring and assessing program outputs instead of examining processes. It also spelled out some Federal performance requirements in regulations, as indicated below.

Under the impetus of DOL, systems for measuring and improving various facets of UI performance were developed over the years and reflected the conditions of the time. Some highlights of this development include the following:

- Since the 1930s, States have been required to submit financial and activity reports to the Department;
- In the 1960s, States assessed various aspects of their performance using a self-appraisal system developed by DOL;

- In 1971, the Supreme Court issued its decision in *California Human Resources Department v. Java* concerning prompt benefit payments and appeals. This decision led DOL to issue regulations, at 20 CFR Parts 640 and 650, specifying Secretary's Standards (SSs) that benefit payments and appeals decisions be made as quickly as "administratively feasible;"

- Later in the 1970s, the Performance Standards project developed the set of performance measures and numerical criteria now called the Quality Appraisal (QA) system. The QA system contains the measures of timeliness and numerical criteria considered to satisfy the SSs for first payment timeliness and lower-level appeals. It also contained other timeliness, quality and accuracy measures, including the Quality Performance Index (QPI) for rating the quality of nonmonetary determinations. Numerical criteria called Desired Levels of Achievement (DLAs) were set for some of these measures;

- Also in the 1970s, the QA system was tied to the budget process: as a condition for obtaining administrative grants, all States pledged to meet certain performance levels and to develop corrective action plans (CAPs) if they failed;

- In 1981, the workload data upon which administrative budgets were formulated and allocated began to be validated through the Workload Validation program;

- Also in 1981, benefit accuracy was first assessed by field-verifying sampled payments through the Random Audit

(RA) program. Desiring to improve the accuracy of benefit payments from the levels RA showed, the Department expanded RA into Benefits Quality Control (BQC) and required its performance by regulation, at 20 CFR Part 602;

- In the late 1980s, DOL initiated Revenue Quality Control (RQC) to revise the QA tax measures and the Performance Measurement Review to improve the QA benefits timeliness and quality measures.

Thus, by the early 1990s, the performance system of the UI program was characterized by the following: there were two explicit SSs (for benefit payments timeliness, and for lower and higher authority appeals promptness) in regulation; numerical criteria called "DLAs" were set for other measures under the Secretary's authority for oversight of the system; systems for measuring benefit payment accuracy and tax operation (revenue) quality were established by regulation, but these contained no criteria indicating satisfactory performance; and other elements of a performance system, such as reporting and preparation of an annual performance and budget plan, were established under the Secretary's authority. A small fraction of reported data was validated.

2. Impetus for Change

A 1993 National Performance Review (NPR) issue paper on BQC summarized a number of concerns about the way UI performance was measured and improved. It called on the Department to "reexamine the present mix of systems for improving the performance of the unemployment insurance program and devise a unified strategy that improves its effectiveness" (Paper DOL21, in NPR, *Creating a Government that Works Better and Costs Less: Department of Labor*, September 1993, at 88).

Although the various UI performance measurement systems and programs functioned well in many regards, experience showed the need for improving them. The numeric criteria in regulations had two major deficiencies. First, they were indicative of what the Department considered to be administratively feasible at the time the regulations were issued. However, over the years some States have improved their performance to the extent that the criteria now appear to be set too low. As an example, during 1980, 34 States met the criterion of making 87 percent of intrastate first payments within the 14/21-day timeliness standard, but only 4 States made as many as 93 percent of payments timely. By 1995, 50 States met

the 87 percent criterion, and 27 States paid at least 93 percent timely.

Second, these fixed criteria could be interpreted to mean that performance above the criteria was neither needed nor expected, which does not encourage continuous improvement. Meanwhile, some States continued to perform at substandard levels. For example, in appraisal year 1995, 11 States failed to meet the criterion of disposing of 60 percent of lower authority appeals within 30 days (down from 22 in 1980). However, 15 States were able to dispose of more than 80 percent within 30 days.

Other performance measures also had problems. A 1989 General Accounting Office (GAO) report notes that some of the QA performance indicators "may be inappropriate and provide misleading indications of service quality, wherein an improvement in the measure could actually be indicating a decline in service quality." They cited as an example the field audit penetration rate. The report also concluded that the QA benefits measures "overemphasize timeliness as opposed to other, more qualitative aspects of program performance." (GAO Report GAO/HRD-89-72BR at 44.) At the same time, some areas are not measured at all. For example, the accuracy of paid claims is measured, but not of decisions to deny, (the samples of nonmonetary determinations rated for quality using the QPI include denials, but the scores are not reported separately). There was no single system linking performance measurements to corrective actions.

3. Development of a New Approach: the UI Performs System

Responding to the NPR call to reexamine current performance improvement systems and develop a unified strategy to improve its effectiveness, in 1993, the DOL assembled the Performance Enhancement Workgroup (PEWG). This was a team of Federal UI Service managers and a corresponding team of senior State employment security personnel (designated by the Interstate Conference of Employment Security Agencies) asked to address jointly various concerns regarding the improvement of UI operational performance. The group met fifteen times in two years to develop the outlines of what it would call the UI Performs system. It set itself the broad goal of developing an approach by which the UI system could continuously improve services to the system's ultimate customers (claimants and employers) by encouraging both Federal and State partners to unify their approach to planning and operational

improvement. The PEWG proposed embodying key elements of the UI Performs system in a short, streamlined regulation, reserving detail (e.g., definitions of measures and numerical benchmarks) to implementing issuances such as handbooks so that they could be changed more easily as needed. The system would rest on the following six main building blocks.

Block One: Partnership Principles

The basic principles are maintaining mutual trust and respect, working as partners with complementary roles, setting high standards, and teamwork. The partners are expected to work closely together in developing measures, setting criteria, and planning for improved performance.

Block Two: Complementary Roles

Federal law gives the Federal partner primary responsibility for leadership of the UI system as a whole, for providing adequate administrative resources, and for oversight of State operations to ensure that the requirements of Federal law are met. States are responsible for creating their own UI laws in conformity with the requirements of Federal law and conducting basic UI operations in accordance with their laws. This block recognizes the existence and wisdom of the complementary functions in the Federal-State UI partnership.

Block Three: Key Performance Objectives and Measures

The workgroup conducted an extensive review of UI activities and identified a set of customer service objectives for which the DOL and the States should both be held accountable. They then decided how performance relative to those objectives would be measured. Most of the performance measures, which included those used for Secretary's standards, are already being implemented by States. The group then designated certain of these measures for the eventual setting of national performance criteria. National criteria are intended to reflect the same level of performance in all States, so the measures must have the same meaning in all States. They also had to represent basic performance objectives, and so all relate to Federal conformity and compliance requirements. The workgroup's list of key performance objectives, how they are to be measured, and which measures should have national performance criteria set for them is contained in UIPL 41-95 (August 24, 1995), a copy of which can be obtained from the contact person listed in the summary. The PEWG also

recommended that objectives, measures and criteria be reviewed periodically and adjusted if necessary.

Block Four: A Continuous Improvement (CI) Cycle

States will use the results of past performance to help set future directions and take actions through the planning process to improve performance continuously. Federal responsibilities include setting national priorities; working with each State in creating its plan and setting its planning targets; approving the plan; assisting with analysis of results; providing technical assistance to States needing or requesting it, based on their past or planned performance; and taking action to ensure States meet national performance criteria.

To ensure CI, a new annual planning process would replace the Performance Budget Plan process. Called the State Quality Service Plan (or SQSP) it would be the primary vehicle through which the State, working closely with Federal staff, assesses its situation and sets priorities for improvement while maintaining performance in other areas. Federal UI performance objectives for the planning cycle would set the stage for this State-specific assessment and priority-setting process.

The proposed cycle envisions a more active Federal role in shepherding and motivating performance improvement. This includes technical assistance, either provided directly or brokered from one State to another. The DOL will establish mechanisms for identifying and acknowledging superior performance. It will also work actively to identify deficient performers. Initially, it will try to get poor performers to improve their customer service through the SQSP process. If this routine mechanism proves insufficient, DOL would take steps which may lead all the way to conformity/compliance actions or other actions under Federal law.

Block Five: A Simplified Regulation

The system envisions a relatively short, general regulation (outlined below). Details on key measures and national Federal performance criteria based on certain of the measures would be contained in implementing issuances such as handbooks so they can be updated as necessary. State staff would be involved in crafting all changes and all States would be given opportunity to comment. Implementing the measures and performing up to criteria levels would be explicit parts of the States' administrative grant agreements.

Block Six: Front-end Activities and Strategies

To succeed, the UI Performs program requires the development of skills and other capacities at both Federal and State levels. Key capabilities include data and systems analyses and the computer capacity and program knowledge to support them. The DOL will both work to enhance its own capabilities in these areas and identify particular skills in various States which can be drawn upon when needed.

The outlines of this new approach have been presented to the UI system and its stakeholders for comment in Unemployment Insurance Program Letter (UIPL) 41-95 (August 24, 1995), and its underlying basic principles in UIPL 46-94 (September 30, 1994). Copies are available from the contact person listed in the summary above. The DOL is now in the process of "rolling it out" by developing and implementing the various components. The main tasks are: Completing the development of new measurement initiatives, including an approach to validating required reports data; modifying the BQC program and reducing its resource requirements; developing, in consultation with States, measurements to fill performance measurement gaps, including denied claims accuracy; developing in consultation with States benchmarks or performance floors for certain key measures; developing the new annual planning process including mechanisms for the negotiation and approval of State-specific objectives; developing a process for the identification, development and brokering of performance improvement skills; development a system of rewards for recognizing exceptional performance; and developing a regulatory base for the UI Performs system. Full development of the system is expected to stretch into 1999.

4. The UI Performs Regulation

An integral part of the overall design of the UI Performs system is a new regulation. The Department envisions a streamlined regulation that would propose the following:

- a. Replace/incorporate key features of 20 CFR 602, 640, and 650, in a more cohesive and, if possible, shorter form;
- b. Set forth the goals (e.g., continuous improvement, service to ultimate

customers) and requirements (e.g., greatest performance that is administratively feasible, performance of certain activities necessary for proper and efficient administration) of the unified strategy embodied in the UI Performs system;

c. Set forth what the UI Performs system requires States to do, including:

- Prepare an Annual Performance Plan (the SQSP) as the basis for receiving administrative grants;
 - Conduct certain performance measurement activities, identified or developed through a consultative process, and report data to DOL;
 - Validate certain key measures;
 - Operate the UI program (pay benefits, collect taxes) with the highest quality (accuracy, timeliness, completeness, adherence to procedure) that is administratively feasible; and
 - Take effective action to ensure performance standards are met;
- d. Establish Federal performance criteria, developed through a consultative process, for certain measures;

e. Provide that, in determining whether to recommend to the Secretary the commencement of proceedings to determine whether tax credits and/or administrative grants (as appropriate) should be withheld on account of sustained deficient performance, the Department will evaluate all the facts relating to a State's performance in the deficient area; and

f. Require Periodic Review of Measures and Criteria to ascertain whether the measures are useful and the criteria are appropriate and adjust either as needed.

Comments Solicited

Reviewers are encouraged to comment on all items in the proposed regulatory design and to pay particular attention to the specific questions below.

1. This regulation would propose, as Federal requirements, the basic core of performance system. The core components would be: (a) Certain performance measurements or measurement systems; (b) validation of certain reported data elements; (c) a performance plan on an annual cycle; and (d) the premise that performance must be of the greatest quality administratively feasible, implemented in practice by a mutually agreed-upon system of nationwide performance criteria for States to meet. Does this

characterization include all appropriate core requirements for the UI Performs system?

2. UIPL 41-95 solicited comments from States and stakeholder groups on proposed UI Performs measures and measures for which national performance criteria would be set. State staff will participate in setting actual performance criteria and the system will be asked to comment on them. The Department offers this Notice as an additional opportunity to comment on what aspects of the UI program should be measured, how these aspects should be measured and what constitutes acceptable performance.

3. Once measures and performance criteria have been agreed upon, the means ensuring adequate performance must be addressed. At present, the Secretary may withhold administrative grants or the Federal Unemployment Tax Act offset credit after notice and an opportunity for a hearing have been provided to the States.

(a) What actions, short of the total termination of tax credits or grants, are appropriate to bring about compliance with performance requirements?

(b) Should there be available to the Secretary less drastic remedies such as a more graduated series of sanctions for sustained poor performance, and if so, what specific sanctions?

(c) How should "sustained poor performance" be defined?

4. Should the Secretary provide rewards for good performance? If so, what specific rewards and under what conditions?

5. Should the regulation provide for the waiver of measurement requirements that are not necessary for the proper and efficient administration of a State's UI program? If so, under what conditions should such waivers be granted?

List of Subjects

20 CFR Part 602

Grant programs, Labor.

20 CFR Parts 640 and 650

Unemployment compensation.

Dated: January 10, 1997.

Timothy M. Barnicle,
Assistant Secretary of Labor.

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