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**DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 15-01**

**TO : ALL STATE EMPLOYMENT SECURITY AGENCIES**

**FROM : GRACE A. KILBANE**  
**Administrator**  
**Office of Workforce Security**

**SUBJECT : Obtaining Information Necessary to Determine Eligibility for Unemployment Compensation**

1. **Purpose.** To remind State agencies that they must make reasonable efforts to obtain information to determine promptly whether individuals are eligible for unemployment compensation (UC).
2. **References.** Section 303(a)(1) of the Social Security Act (SSA); 20 CFR Part 602, Appendix A; Employment Security Manual (ESM), Part V, Section 6013; ETA Handbook No. 301, UI PERFORMS: Benefits Timeliness and Quality - Nonmonetary Determinations Quality Review.
3. **Background.** During reviews of nonmonetary adjudications under UI PERFORMS, the Federal performance review program, it was found that some States are not making sufficient efforts to obtain the information necessary to determine whether UC is due. In many cases States did not attempt to obtain information from employers that failed to respond to the notice of claims filing when that information was needed to make eligibility determinations. As a result, these States are making payments of UC without taking adequate steps to determine if UC is "due" as required under Federal UC law.
4. **Federal Requirements.**
  - a. **Social Security Act.** Section 303(a)(1), SSA, requires, as a condition of a State receiving UC administrative grants, that State law include provision for-
    - (1) Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due;
  - b. **Interpretation.** Part V, Sections 6010-6015, of the ESM contains the Standard for Claim Determinations - Separation Information. This standard has been codified as part of Appendix A to 20 CFR Part 602 and Appendix B to 20 CFR Part 614. Section 6011 of the standard states, in part, that the Secretary of Labor interprets Section 303(a)(1), SSA, to mean that State law must include provisions to insure that the State agency "obtains and records in time for the prompt determination and review of benefit claims

such information as will reasonably insure the payment of benefits to individuals to whom benefits are due."

Section 6013.A of the standard provides that-

The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This section goes on to state that "it is the responsibility of the agency to take the initiative in the discovery of information" and that "this responsibility may not be passed on [to] the claimant or the employer." This section also provides that "if the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary." The investigation made by the agency "must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with" its UC law. On the other hand, "the investigation should not be so exhaustive and time-consuming as to unduly delay the payment" of UC and "to result in excessive costs."

5. **Discussion.** Section 303(a)(1), SSA, requires that States have methods of administration as are found by the Secretary of Labor to be reasonably calculated to ensure that claimants are paid the full amount of UC which they are due. The Standard for Claims Determinations establishes the essential elements of claims investigation procedures for a State to meet the "when due" requirement of Section 303(a)(1), SSA. Central to these procedures is that a State must make a reasonable attempt to contact employers, claimants, or third parties to obtain additional information pertaining to an individual's eligibility for UC whenever there is insufficient information available to make a determination, or if the information received from the parties conflicts. Without such an effort, the State will not have sufficient information to make payment "when due" as required by Section 303(a)(1), SSA.

In most cases, employer information is essential in situations where the reason for an individual's unemployment is a discharge, a refusal of work, or where the individual has received separation pay. Unless the claimant has provided sufficient and convincing information (e.g., a non-work related voluntary quit) to enable the State agency to make a determination of eligibility (or ineligibility) without further inquiry, the State agency must make a reasonable attempt to obtain sufficient information in order to determine the claimant's eligibility. When necessary, relevant information must be obtained from parties other than the claimant or the separating employer. Examples of such third parties include (but are not limited to) physicians, school officials, other employers, and union officials.

When information from the employer or other sources differs essentially from that furnished by the claimant, the State agency must inform the claimant of the conflicting information and afford the claimant an opportunity to furnish any further facts he or she may have.

Pages V-11 through V-16 of ETA Handbook No. 301, UI PERFORMS: Benefits Timeliness and Quality - Nonmonetary Determinations Quality Review outline the minimum criteria necessary to satisfy the requirement that States make a reasonable attempt(s) to obtain the necessary information to make eligibility determinations. These are minimum criteria designed to satisfy the requirements of Section 303(a)(1), SSA. Nothing prohibits States from going beyond these minimum criteria if they wish, provided the procedures do not become so burdensome as to prevent timely payment when due.

6. **Action Required.** State Administrators should provide this information to the appropriate staff.
7. **Inquiries.** Inquiries should be directed to the appropriate Regional Office.

## Questions and Answers

Q 1. Under State law, when an employer does not return the notice of claim form within the specified time, in this case within 10 days of receipt, the employer has waived its standing as a party to any proceedings arising from the claim and is barred from protesting any decision about the claim. What should States do in situations where the information from the claimant is not sufficient to make a determination and the employer has lost standing?

A 1. The agency still has an affirmative responsibility to make a reasonable attempt(s) to contact the employer in order to obtain the information necessary to make a determination. The fact that an employer has lost standing is not relevant. The agency must take the initiative to discover the information necessary to make the proper determination. The loss of standing applies to the right of the employer to protest a decision. It does not negate the State agency's responsibility to make reasonable efforts to contact any party, including the employer, that may have information that is necessary to determining whether UC is due. If a State's law prohibits the agency from attempting to obtain the necessary information from the employer, the State will need to amend its law to conform to Section 303(a)(1), SSA, as a condition for receiving UC administrative grants.

Q 2. What if State law prohibits the State agency from contacting an employer who does not respond to the initial notice of claim filing?

A 2. As stated above, the State has an affirmative responsibility to obtain the information necessary to make the proper determination of a claimant's eligibility. If State law prohibits the State agency from contacting an employer who has information relevant to, and necessary for, the proper determination of eligibility for benefits, the State law would be in conflict with the requirements of Section 303(a)(1), SSA.

Q 3. Is the State required to attempt to contact the employer every time a notice of claims filing is not returned?

A 3. No. The State is required to attempt to contact the employer only if a potential issue exists and the employer may have information necessary to determine whether the claimant is eligible for UC.

Q 4. If the employer does not provide any information, but the claimant provides sufficient information to determine that the reason for separation was a voluntary quit unconnected with the work (for example, to go to school), must the agency contact the employer?

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A 4. No. The employer needs to be contacted only when information is necessary to make a determination. If the claimant provides information that is sufficient to prove that he/she is not eligible based on the separation, the agency does not need to investigate further. It is the agency's responsibility, however, to ensure that the claimant has provided sufficient and accurate information upon which to make a determination before deciding not to contact the employer.

Q 5. What should the State agency do when reasonable attempts to contact the employer are unsuccessful?

A 5. In such situations, ETA Handbook No. 301 (p V-11) advises that the State document the unsuccessful actions taken to contact the employer and make a determination based on the available information.

Q 6. May a State automatically find the claimant eligible for UC when an employer fails to return a notice of claim form?

A 6. No. The agency has an affirmative responsibility to develop the facts in order to determine whether UC is due. An automatic finding of eligibility based on the employer's failure to return the notice of filing form is not a method of administration reasonably calculated to ensure payment when due.