

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI Performs
	CORRESPONDENCE SYMBOL OWS/DPM
	DATE April 16, 2008

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-05,
CHANGE 3

TO: STATE WORKFORCE AGENCIES

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SUBJECT: Acceptable Levels of Performance (ALP) Criteria for Appeals Case Aging Measures and Nonmonetary Determination Quality Review

1. **Purpose.** To inform states of the acceptable levels of performance criteria for the average age of pending lower and higher authority appeals core measures, to update the current minimum passing score for nonmonetary cases and the sampling rules for the measure of nonmonetary determinations quality. This is also to remind states that the regulatory requirements remain in effect for lower authority appeals promptness.
2. **References.** 20 CFR 650.4(b); UIPL No. 14-05, Changes to UI Performs, dated February 18, 2005; UIPL No. 14-05, Change 1, Performance Criterion for the Overpayment Detection Method; Clarification of Appeals Timeliness Measures; and Implementation of Tax Quality Measure Corrective Action Plans (CAPs), dated October 12, 2005; UIPL No. 14-05, Change 2, Performance Criteria for Appeals Case Aging Measures and the Starting Date for Measuring Nonmonetary Determinations Time Lapse; Handbook 301, 5th Edition - UI Performs: Benefits Timeliness and Quality (BTQ) Nonmonetary Determinations Quality Review, Revised July, 2005; and ET Handbook 401, 4th Edition.
3. **Background.** UIPL No. 14-05 and UIPL 14-05, Changes 1 and 2, described changes to the UI Performs performance management system, some of which required additional data collection and analysis. At the time of these issuances, the ALPs for the average age of pending appeals for both lower authority appeals and higher authority appeals were deferred until sufficient data had been collected. States were advised of the instructions for the data collection in Handbook 401, Change 13, dated April 18, 2005. States were also advised to begin reporting the new data elements for the month of June 2005. In UIPL No. 14-05, Change 2, states were

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requested to review and comment on the proposed case aging ALPs for lower authority and higher authority appeals. All states have successfully reported data on the average age of both lower and higher authority appeals for at least 12 months.

4. **Highlights of the Comments.** Sixteen states responded, and most addressed both lower authority and higher authority appeals in their comments. The comments fell into several categories: overall support or opposition, the level of performance that has been proposed, the measurement itself, effective date, quality concerns, and alternative measures. Although comments received about specific aspects were mixed, states' comments were generally favorable regarding a case aging measure for lower authority and higher authority appeals. Overall nine states support the measure, and two states oppose it. One state offered support for the measure for lower authority and opposition for higher authority; support or opposition was not expressed by four states.

The proposals that generated the most comments are discussed briefly below along with the Department of Labor's (DOL) responses. See Attachment A, for specific comments and DOL's response. All comments were considered in making the final changes to the case aging ALP.

- a. **Acceptable Average Age.** Of the 16 states responding, eight states commented on the 30 day ALP for lower authority appeals case aging. Four states generally regarded the proposed criterion as achievable; three states wanted an increase in the number of days for lower authority. One state suggested setting the criterion at fewer than 30 days.

The proposed 40 day average age criterion for higher authority appeals was of more concern to the commentators. Eight states believe that the higher authority appeals case aging ALP should be less stringent. Suggestions for a change to the number of days ranged from "greater than 40" to a maximum of 60 days.

DOL Response: One of the cornerstones of the unemployment insurance system is promptness. Appeals should be scheduled as quickly as administratively possible. Delays in processing appeals may cause hardship for the parties and can lead to overpayments.

The data indicate that most states can meet the ALPs that have been set. For calendar year 2007, the national average age for pending lower authority cases was 39.4 days. This national average age is inflated by four states where the average age exceeds 50 days. Most states, however, dispose of appeals more quickly. The average age of pending lower authority appeals in 36 states was 30 or fewer days, and the average age in 15 of those states was fewer than 20 days.

Processing time for higher authority appeals is longer than for lower authority appeals. For calendar year 2007, the national average age for pending cases was 61.4 days. This reflects very high average ages in three states. However, in 30 states the average age of higher authority appeals was 38 or fewer days, and the average age of appeals in 11 of those states was under 20 days.

To view the state rankings of core measures, visit DOL's Web site at:
<http://ows.doleta.gov/unemploy/ranking.asp>

- b. **Alternative Measure.** Six states commented that there should be an alternative measure. Some suggested that a sliding scale be developed taking into account caseload, resource limitations and economic conditions. Other states wanted these variables as part of the measurement, with one state calling for a multiple regression model. Another state suggested a two-step measure, with two standards being established depending on the administrative rules of the state.

DOL Response: In order to ensure comparability across states and to afford claimants in all states the same expectation of timely disposition of their appeals, a single ALP for case aging has been implemented for this measure.

- c. **Effective Date.** Two states wanted the effective date of the measure reconsidered. Both states thought that April 1, 2007, was too soon and more discussion on the proposed measurement was necessary.

DOL Response: The effective date of the measure was changed to April 1, 2008, to provide states more time to develop the necessary systems for collecting and reporting the required data.

5. **Average Age of Pending Lower Authority and Higher Authority Appeals.** UIPL No. 14-05, defines the new Core Measure for lower and higher authority appeals -- Average Age of Pending Appeals, as the average number of days unresolved single claimant cases are pending. Because the measurement methodology was new, ETA deferred setting acceptable levels of performance until data for the measure could be assessed. The full definition and the ALPs for the measure are presented below:

- a. **Measurement.** The measure is the average age of all pending single-claimant appeals at the end of the measurement period. Lower authority appeals and higher authority appeals are each measured using the following methodology.
- The average age of unresolved cases is calculated by first determining the number of days each unresolved appeals case has been pending.

- Next, the total number of days for all unresolved cases is obtained by summing the ages of the pending cases.
- Finally, the total number of days is divided by the number of unresolved cases to produce the average case age.

For example, if a state had 500 cases unresolved on the last day of the month, and 150 were five days old, 200 were 20 days old, 50 were 35 days old, and 100 were 210 days old, the sum of the number of days pending would be $750+4,000+1,750+21,000$ for a total of 27,500 days. $27,500/500=55$ days average age.

- b. Acceptable Level of Performance. The ALPs for the average age of appeals are:
- | | |
|-----------------------------|---------|
| % Lower Authority Appeals: | 30 days |
| % Higher Authority Appeals: | 40 days |

To determine whether the ALPs have been met, the average age of pending appeals will be measured as of March 31, the last day of the performance year. Using the average as of March 31, avoids the possibility of good performance in the early part of the twelve month period masking poor performance late in the period. It also avoids the need for corrective action plans (CAPs) if poor performance in the early part of the year has been remedied by the end of the period.

- c. Implementation Date. The ALPs for the lower authority appeals and higher authority appeals case aging measures are effective for Performance Year 2009 (April 1, 2008 – March 31, 2009) and thereafter. States that do not meet the ALPs for this period will be expected to submit CAPs with their Performance Year 2010 State Quality Service Plan (SQSP).

6. Regulatory Requirements for Appeals Promptness. The regulatory requirements for lower authority appeals promptness are found in 20 CFR Part 650.4(b). These requirements remain in effect, and failure to meet them will require corrective action. These requirements are:

60% of Lower Authority Appeals decided within 30 Days of Filing
80% of Lower Authority Appeals decided within 45 Days of Filing

7. Nonmonetary Determination Quality Review. As part of the review of UI Performs, DOL convened a federal/state workgroup to study and recommend changes to the Benefits Timeliness and Quality (BTQ) nonmonetary determination quality review. DOL issued a revised BTQ nonmonetary determinations review handbook (Handbook 301, 5th Edition) July 29, 2005, to include changes resulting from the study. To assure consistency, the descriptions of Core Measure No. 5,

"Nonmonetary Determination Quality: Separation Issues" and Core Measure No 6, "Nonmonetary Determinations Quality: Nonseparation Issues" in attachment C to UIPL No. 14-05 have been modified to clarify the minimum passing score for each case in the quality review, and provide instructions for assuring an adequate sample size when case materials cannot be found.

8. **Action.** State Administrators are requested to:
 - a. Distribute this document to all appropriate SWA staff.
 - b. In UIPL No. 14-05, replace Core Measures: Page 5 "Nonmonetary Determinations Quality: Separation Issues," Core Measures: Page 6 "Nonmonetary Determinations Quality: Nonseparation Issues," Core Measures: Page 8 "Average Age of Pending Lower Authority Appeals," and Page 9 "Average Age of Pending Higher Authority Appeals" in Attachment C with the attached Core Measures pages.
9. **Inquiries.** Direct inquiries to the appropriate regional office.
10. **Attachments.**

Attachment A - Comments on the Proposed Acceptable Level of Performance for Appeals Case Aging Measures.

Note - There is no attachment B to this UIPL No 14-05, Change 3

Attachment C - UIPL No. 14-05 contained an Attachment C, *Core Measures*. Below are replacement pages to Attachment C of UIPL No. 14-05, dated February 15, 2005:

- Page 5 Nonmonetary Determinations Quality: Separation Issues
- Page 6 Nonmonetary Determinations Quality: Nonseparation Issues
- Page 8 Average Age of Pending Lower Authority Appeals
- Page 9 Average Age of Pending Higher Authority Appeals

Comments on the Proposed Acceptable Level of Performance for Appeals Case Aging Measures

#	Issue	Comment	DOL Response
1	Acceptable Average Age	<p>Several states commented on the level of the acceptable average age, for both lower authority appeals and higher authority appeals. Regarding the measure for lower authority appeals the comments ranged from being achievable but difficult, to too high and too low.</p> <p>Three states wanted the measure for lower authority changed. One state suggested 35 or 40 days as acceptable, while another recommended 40 days. One state wanted a change on the upper limits of acceptable, while another thought that the level was too low.</p> <p>Similar comments were made regarding the level of acceptable average age in higher authority. The acceptable average age for higher authority appeals was a greater concern than for lower authority. One state proposed 50 days, while another thought 58 days was more appropriate. Two states suggested a 60 day acceptable average age; while two others thought that the average age needed to be raised but did not offer a suggestion.</p>	<p>One of the hallmarks of the unemployment insurance system is timeliness. Parties deserve timely determinations and appeals. Delays in processing claims or appeals may cause hardships for the parties when they are most in need.</p> <p>A review of states statistics show 38 states achieving the measure for lower authority and 34 states for higher authority in April, 2007.</p>
2	Measure	<p>Three states suggested that quantifiers be used with the measure. One state proposed additional variables including population, economic base, annual caseload, unemployment rate, decision-making tribunals and other procedural safeguards be part of the measure.</p> <p>Another state suggested a sliding scale based on UI rate, number of annual dispositions, or some other figure that would determine the relative capacity of the state's ability to hear the cases.</p>	<p>There has been concern for several years that the timeliness measure was not adequately addressed in the Secretary's standards for time lapse.</p> <p>States need to move towards the first in, first out concept regarding the appeals caseload.</p>

Comments on the Proposed Acceptable Level of Performance for Appeals Case Aging Measures

#	Issue	Comment	DOL Response
2	Measure	<p>One state commented that a multiple regression model should be developed for the measure.</p> <p>One state advocated for a flexible measure that would consider workload fluctuations.</p> <p>Another state suggested that the measure be developed to take into account for the time that the appeals authority actually has to hear a case.</p> <p>Three states commented that the proposed measure disadvantages states with high workloads.</p> <p>Five states expressed concern that meeting the measure would be difficult because of the state's criteria set in law or statute that require cases to be held for a given number of days, or require a certain number of days before a response may be given.</p> <p>Three states were concerned that the measure was developed in good economic times.</p>	<p>Allowing more than age in the formula for the measure would lead to confounding the data and more errors regarding the measurement.</p> <p>Additional variables could confound the measure with extraneous information that does not impact the ability to hear cases timely.</p> <p>Multiple variables in the measure would also hinder the analysis that could be performed.</p> <p>The simplicity of the proposed measure allows a common ground for all states and allows for better comparisons across regions and states.</p>
3	Effective Date of Measure	<p>Two states requested a reconsideration of the April 1, 2007 effective date for the measure. The states thought that more discussion on the proposed measurement was necessary.</p>	<p>The formal implementation of the measure will occur on April 1, 2008.</p>
4	Quality Concerns	<p>Two states are concerned about the quality of the process. The states believe if the effort is centered on doing cases fast, the integrity of the system would be compromised and quality would suffer.</p>	<p>It has been established that backlog of cases not the time to hear them impacts the quality of the hearing. States that have case backlogs are more likely to have dips in quality than those states that do not have sizeable backlogs.</p>

Comments on the Proposed Acceptable Level of Performance for Appeals Case Aging Measures

#	Issue	Comment	DOL Response
4	Quality Concerns	Another state commented that due process would be compromised if there was not sufficient time to follow the procedures in regulation in some states to ensure due process protections.	It is important to preserve the due process of the parties within the confines of the measures. States consistently apply due process to the appeals procedures.
5	Alternative Measure	<p>Two states were concerned that the measurement was not correct. One state commented that the median rather than the mean should be used.</p> <p>One state proposed a two-tier measure because of their regulatory requirement for a hearing of right.</p>	<p>A median is a measure of the midpoint of data, while a mean is the average of the data. A median measure does not capture the data that is necessary to determine the length of time cases are pending.</p> <p>It would be difficult to compare states and regions with the additional factors to be considered.</p>
6	One Time Measurement	One state was concerned that a one-time only measurement taken in the last day of the performance year would not yield an accurate measure of the state's performance. The state suggested that the measurement be taken periodically (e.g. monthly or quarterly) and the measure becomes the average of these multiple measurements.	A point in time measurement gives the snapshot of where the state is on timeliness. This does not preclude the SWA from taking additional measures to determine where they are in their timeliness. An average of several measures is less reliable for how timely the hearing process is.
7	Other	<p>Two states were concerned about how the measure had been vetted.</p> <p>One state commented that the requirement to submit a corrective action plan for failure to meet the ALP may be compromised by the provisions of the Bankruptcy Code and the Servicemembers Civil Relief Act, which expressly provide for a stay of proceedings, such as unemployment appeals under certain circumstances.</p>	The measure has been introduced and discussed in various formats on many occasions since the mid-1990s.

Core Measures

5. Nonmonetary Determinations Quality: Separation Issues

Measure:	Assessment of the quality of nonmonetary determinations dealing with separation issues.
Change:	The passing score for each case must be 95 points or higher. States must increase the sample size in subsequent quarters to make up for instances of "case material not found."
Data Source:	Universe of nonmonetary determinations completed on separation issues within the calendar quarter being reviewed.
Computation and Criterion:	Quarterly random sample of 30 or 50 separation determinations drawn from the universe. Sample size is determined by the number of nonmonetary determinations completed in the previous calendar year. Sample size is increased in the subsequent quarter by the same number of any instances of "case material not found." 75% of the cases must score 95 points or higher. Invalid cases, those out of the scope of the review, and those for which no documentation is found are not scored, and must not exceed set thresholds for scores to be considered representative of the quality of the state's nonmonetary determinations.
Reporting:	Scoring uses a data collection instrument; the elements are entered into the ETA 9056 report for each scored case. The ETA 9056 transmission report will automatically apply the sample validity tests and produce the unweighted quality score when the state transmits the sample results to the National Office. Annually, the National Office will report a quality score weighted by the numbers of separation and nonseparation determinations in the sample universe for each state.
Reporting Categories:	None
Reporting Frequency:	Quarterly

Core Measures

6. Nonmonetary Determinations Quality: Nonseparation Issues

Measure:	Assessment of the quality of nonmonetary determinations dealing with nonseparation issues.
Change:	The passing score for each case must be 95 points or higher. States must increase the sample size in subsequent quarters to make up for instances of "case material not found."
Data Source:	Universe of nonmonetary determinations completed on nonseparation issues within the calendar quarter being reviewed.
Computation and Criterion:	Quarterly random sample of 30 or 50 nonseparation determinations drawn from the universe. Sample size is determined by the number of nonmonetary determinations completed in the previous calendar year. Sample size is increased in the subsequent quarter by the same number of any instances of "case material not found." 75% of the cases must score 95 points or higher. Invalid cases, those out of the scope of the review, and those for which no documentation is found are not scored, and must not exceed set thresholds for scores to be considered representative of the quality of the state's nonmonetary determinations.
Reporting:	Scoring uses a data collection instrument; the elements are entered into the ETA 9056 report for each scored case. The ETA 9056 transmission report will automatically apply the sample validity tests and produce the unweighted quality score when the state transmits the sample results to the National Office. Annually, the National Office will report a quality score weighted by the numbers of separation and nonseparation determinations in the sample universe for each state.
Reporting Categories:	None
Reporting Frequency:	Quarterly

Core Measures

8. Average Age of Pending Lower Authority Appeals

Measure:	The mean and median of all pending single-claimant Lower Authority Appeals.
Change:	This measure is new in UI Performs. It takes the age of all pending single-claimant appeals into account and allows prediction of and planning for future performance.
Data Source:	Universe of pending single-claimant Lower Authority Appeals, ETA 9055.
Computation and Criterion:	<p>At the close of business on the last day of each month, access the universe of pending single-claimant Lower Authority Appeals. Determine actual age of each pending single-claimant Lower Authority Appeal by counting days elapsed from the date of filing to the date of count. Sum actual age in days of all pending single-claimant Lower Authority Appeals and divide by the total number of pending Lower Authority Appeals to arrive at the average age.</p> <p>Determine the median age of all pending single-claimant lower authority appeals using the following formula. If all of the pending appeals cases (lower or higher authority) are ranked from the lowest to the highest age, the median is the age of the case at the midpoint of the ranked cases. If there is an odd number of cases (n), the median is the age of the $[(n+1)/2]^{\text{th}}$ case. If there is an even number of cases (n), the median is the value midway between the age of the $(n/2)^{\text{th}}$ case and the $[(n/2)+1]^{\text{th}}$ case.</p> <p>The ALP for the Average Age of Pending Lower Authority Appeals will be based on the mean measure and is set at 30 or fewer days. State Workforce Agencies are to continue to submit median data to assist in the data analysis. The ALP will be measured on March 31 of the Performance Year.</p>
Reporting:	Report the average age and median age as determined by the above computations.
Reporting Categories:	None
Reporting Frequency:	Monthly

Core Measures

9. Average Age of Pending Higher Authority Appeals.

Measure:	The mean and median of all pending single-claimant Higher Authority Appeals.
Change:	This measure is new in UI Performs. It takes the age of all single-claimant pending appeals into account and allows prediction of and planning for future performance.
Data Source:	Universe of pending single-claimant Higher Authority Appeals, ETA 9055.
Computation and Criterion:	<p>At the close of business on the last day of each month, access the universe of pending single-claimant Higher Authority Appeals. Determine actual age of each pending single-claimant Higher Authority Appeal by counting days elapsed from the date of filing to the date of count.</p> <p>Sum actual age in days of all pending single-claimant Higher Authority Appeals and divide by the total number of pending single-claimant Higher Authority Appeals to arrive at the average age.</p> <p>Determine the median age of all pending single-claimant higher authority appeals using the following formula. If all of the pending appeals cases (lower or higher authority) are ranked from the lowest to the highest age, the median is the age of the case at the midpoint of the ranked cases. If there is an odd number of cases (n), the median is the age of the $[(n+1)/2]^{\text{th}}$ case. If there is an even number of cases (n), the median is the value midway between the age of the $(n/2)^{\text{th}}$ case and the $[(n/2)+1]^{\text{th}}$ case.</p> <p>The ALP for the Average Age of Pending Higher Authority Appeals will be based on the mean measure and is set at 40 or fewer days. State Workforce Agencies are to continue to submit median data to assist in the data analysis. The ALP will be measured on March 31 of the Performance Year.</p>
Reporting:	Report the average age and median age as determined by the above computations.
Reporting Categories:	None
Reporting Frequency:	Monthly