

Attachment A

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>

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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>

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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	Two states were concerned that the measurement was not correct. One state commented that the median rather than the mean should be used. One state proposed a two-tier measure because of their regulatory requirement for a hearing of right.	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. It would be difficult to compare states and regions with the additional factors to be considered.
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	Two states were concerned about how the measure had been vetted. 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.	The measure has been introduced and discussed in various formats on many occasions since the mid-1990s.