

Attachment A – Comments on UIPL 30-10

Issue	Comment	USDOL Response
New Proposed Measure	A total of 27 states provided comments regarding the proposed audit measure: 15 states strongly supported the measure; 10 states offered support with questions; and 2 states opposed the proposed measure.	Answers to the respondent questions are provided below.
Factor 1 % of Contributory Employers Audited Annually	Too Low – Three states commented that the factor’s minimum was too low. Two states wanted to retain the existing 2.0% measure; one state wanted to lower the rate to 1.5%.	The Effective Audit Measure was structured to accommodate states that want to retain the existing audit measure. The overall score of 7.0 includes two points for states to emphasize the factor(s) important to their state. Consequently, if these three states direct additional effort to the number of audits performed, the audit percentage above 1.0% would earn credit toward the two points needed for state-directed emphasis.
Factor 1 % of Contributory Employers Audited Annually	Too High – One state commented that the factor’s minimum was still too high.	Under the new Effective Audit Measure, the number of audits was reduced by 50%. A further reduction to this factor would adversely impact the state’s ability to detect and deter employer reporting and classification errors.
Factor 2 % of Total Wages Changed as a Result of Audit	Too High - One state commented that the factor’s minimum was too high.	Under the new Effective Audit Measure, the % of Total Wages Changed as a Result of Audit was established at 2.0%. A further reduction to this factor would adversely impact the state’s ability to detect and deter employer reporting and classification errors.
Factor 3 % of Total Wages Audited	Too High - One state commented that the factor’s minimum was too high.	Under the new Effective Audit Measure, the % of Total Wages Audited was established at 1.0%. A further reduction to this factor would adversely impact the state’s ability to detect and deter employer reporting and classification errors.
Factor 3 % of Total Wages Audited	Too Low - One state commented that the factor’s minimum was too low.	The Effective Audit Measure was structured to accommodate states that want to retain the existing audit measure. The overall score of 7.0 includes two points for states to emphasize the factor(s) important to their state. Consequently, if this state directed additional effort to the larger employer audits, the total wages audited percentage above 1.0% would earn credit toward the two points needed for state-directed emphasis.

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<p>Factor 4</p> <p>Average Number of Misclassifications per Audit</p>	<p>Too High - Three states commented that the factor's minimum was too high.</p>	<p>Under the new Effective Audit Measure, the Average Number of Misclassifications per Audit was established at 1.0. While it is true that only 23 states met the factor's minimum score in 2009, this occurred when the factor was not a formal measure and states were not emphasizing their misclassification efforts. States that have implemented a targeted audit selection process have demonstrated that misclassification detection numbers increased significantly, and USDOL believes that this will occur in states that implement a targeted audit selection process.</p>
<p>Summary Score</p>	<p>Too High – One state commented that the summary score was too high.</p>	<p>The Effective Audit Measure uses minimally acceptable levels for each of the four factors, along with two additional points that states earn in any of the four factors.</p>
<p>Misclassified Workers</p>	<p>Five states had questions regarding Misclassified workers. Does the new measure only include independent contractors?</p>	<p>UIPL 30-10 included the following text regarding misclassification: <i>“Employees discovered through audits that were previously misclassified by the employer. This would include counting all employees that were discovered through audit; including those reported by the employer on Internal Revenue Service form 1099, as well as workers that were unreported (off the books).”</i></p>
<p>Misclassified Workers</p>	<p>Two states requested a definition of the term “off-the-books”.</p>	<p>Generally, these workers are paid in cash by employers who would not record their payment for wages or services in accounting books and would not report their wages for UI.</p>
<p>Misclassified Workers</p>	<p>One state asked whether they should revise their ETA 581 reports retroactively for item 52 to reflect the new definition.</p>	<p>No, the new definition for item 52 on the ETA 581 report will occur for the report period ending March 31, 2011.</p>
<p>Frequency of Measure</p>	<p>One state asked whether the factors and the overall measure would be quarterly or annual measures.</p>	<p>The Effective Audit Measure will be published quarterly to provide current indicators for state and federal staff. Similar to the existing measures in UI Performs, however, state performance will be determined annually, on a calendar year basis.</p>

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Effective Date of Measure	Four states commented on the effective date of the new measure. One state asked to have the measure sunset after two or three years, one asked to have the measure sunset after 2012, and one state asked to delay the measure until 2015.	UIPL 30-10 included the following text regarding implementation: <i>“The proposed Effective Audit Measure will become part of the UI Performs Core Measures for the 2013 calendar year evaluation period, which would require a state that fails the measure to write a CAP for the SQSP submitted during the summer of 2014.”</i> Additionally, UIPL 30-10 stated that <i>“USDOL will evaluate the employer audit summary data on the ETA 581 Contributions Operations report three years after the initial implementation date to determine whether the proposed employer audit measure was effective in promoting the detection of worker misclassification and determine whether it will remain a core measure as proposed.”</i>
Audits	Two states asked whether random audits would still be required.	The existing guidance regarding audit selection in the Employment Security (ES) Manual states: <i>“To ensure that all employers are included in the audit selection process, States are encouraged to randomly select 10% or more audit assignments from the total universe of contributory employers.”</i>
Audits	Two states asked whether the TPS definition for an acceptable audit could be changed so that investigations could be included in the audit data.	Handbook 401 provides the following language regarding audits that may be counted for ETA 581 reporting purposes: <ul style="list-style-type: none"> <i>a. Include an opening interview,</i> <i>b. Cover a minimum of four calendar quarters (except as specified in ES Manual, Part V, Section 3675),</i> <i>c. Verify the business entity as a sole proprietor, partnership, corporation, joint venture, or other,</i> <i>d. Document records examined and evidence obtained in tests used to verify payroll procedure, accuracy and completeness,</i> <i>e. Document records available and examined and the evidence obtained in the search for misclassified workers and payments,</i> <i>f. Conclude with a close-out conference with the employer or designated representative or include an explanation if not conducted; and</i> <i>g. Include a written report stating the auditor's final determination and all facts contributing to or supporting that final determination</i> <p>These criteria remain unchanged.</p>

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Audits	One commenter asked whether states would be required to find at least one misclassification per audit, and what the impact would be on employers.	The fourth factor is the average number of misclassifications per audit. States are expected to determine proper classification using the information discovered during the audit. For employers that comply with the law and properly classify their workers, these proposed measures will help them by leveling the playing field. For employers that misclassify workers, there will be an increased risk that they will be selected for audit, and that they will be found to have misclassified workers.
Audits	One state commented that the TPS definition for an acceptable audit should not be changed.	The definition remains unchanged.
State-Directed Emphasis	One state commented that they did not see any criteria for how this factor would be measured to allow for the minimum score of 2 points	The minimum level of achievement for the sum of the four factors is 5.0. Factor scores are measured to the tenth decimal place. States are required to achieve greater than the minimum achievement levels in one or more factors, so that the total Effective Audit Measurement score is at least 7.0.