

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI – Audit Measurement
	CORRESPONDENCE SYMBOL OUI /DUI O
	DATE December 30, 2010

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 03-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Implementation of the Effective Audit Measure

1. Purpose. To advise states of a new Core Measure in the *Unemployment Insurance (UI) Performs* performance management system to evaluate state UI employer audit programs and include elements of worker misclassification detection and enforcement.

2. References.

- Employment and Training (ET) Handbook No. 401, 4th Edition, *Unemployment Insurance Reports Handbook and Subsequent Changes*
- ET Handbook No. 407, 4th Edition, *Tax Performance System*
- ET Handbook No. 336, 18th Edition, *UI State Quality Service Plan (SQSP) Planning and Reporting Guidelines*
- Unemployment Insurance Program Letter (UIPL) No. 14-05, *Changes to UI Performs*
- UIPL No. 23-10, *Additional Planning Guidance for the Fiscal Year (FY) 2011 Unemployment Insurance (UI) State Quality Service Plan (SQSP)*
- UIPL No. 30-10, *Proposed Effective Audit Measure for State Unemployment Insurance (UI) Employer Audit Programs*

3. Background. The UI employer audit program has historically been measured by the number of audits completed annually. This measure served the program well in the past; however, there have been increasing numbers of employers that have been found to circumvent employment taxes by misclassifying workers. The current audit measure does not indicate whether states are effectively detecting employers that misclassify their employees. The U.S. Department of Labor’s (USDOL) Employment and Training Administration (ETA) formed a team of Federal and state UI tax experts to determine whether a more effective audit measure could be developed that would capture state efforts to detect worker misclassification. UIPL No. 30-10, which was issued on September 2, 2010, informed states that the federal-state team recommended certain changes regarding how the UI employer audit program is evaluated. States were asked to provide comments on the proposed measure. The comment period expired on September 30, 2010, and twenty-seven states and the Strategic Services on Unemployment and Workers’ Compensation (UWC) provided comments (see highlights below).

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4. Highlights of Comments. Most comments were generally favorable to the proposed new measure. The areas that generated the most comments are discussed briefly below along with USDOL's responses. See Attachment A for specific comments and USDOL's responses. All comments were considered in making the final changes to UI Performs.

- General Comments – Of the twenty-seven states that provided comments on the proposed audit measure, fifteen states strongly supported the measure, ten states supported the measure with accompanying questions, and two states opposed the proposed measure.
- Factor Performance Levels – Six states commented on the performance levels for the individual factors and the overall summary score. Two states commented that the minimum performance levels were too low and four states commented that they were too high.

USDOL response – The Acceptable Levels of Performance (ALP) for each of the factors were established after examining six years of historical state data and consultation with the federal-state team. The ALP for each factor was set well below both the average and mean national scores. USDOL agrees that not every state will want to emphasize the same areas of audit performance; therefore, two points for self-directed emphasis are included in the Effective Audit Measure to allow states the flexibility to emphasize the factor, or factors, that matter most in their state.

- Effective Dates – Several states commented on the implementation dates of the Effective Audit Measure. They suggested that USDOL delay the implementation date for the new measure and/or consider a re-evaluation of the new measure after a certain period of time.

USDOL response – Some states will need time to enact changes to their audit program to accomplish the minimum performance levels required under the Effective Audit Measure. States that fail the new measure will not be required to write a Corrective Action Plan (CAP) until the FY 2015 SQSP. The FY 2015 SQSP will use calendar year 2013 Effective Audit Measure results. Additionally, UIPL No. 30-10 states that the effective Audit Measure will be re-evaluated three years after implementation to determine whether the new measure was effective in promoting the detection of worker misclassification.

- Audit Definitions – Several states commented on the definitions of what constitutes a reportable audit on the ETA 581 Contributions Operations report. Some states asked that the definition of a valid audit be broadened under the Tax Performance System (TPS), while other states recommended that the TPS definitions and standards for a valid audit remain unchanged.

USDOL response – The definition of a valid audit will remain unchanged but will be evaluated as part of the overall assessment of the new Effective Audit Measure.

5. Revised UI Performs Measures and Criteria. The Effective Audit Measure will be a UI Performs Core Measure. The new measure will be comprised of four factors: 1) *Percent of Contributory Employers Audited Annually*, 2) *Percent of Total Wage Change From Audit*, 3) *Percent of Total Wages Audited*, and 4) *Average Number of Misclassifications Detected Per Audit*. Each of the four factors has a minimum standard score that states must attain to pass the Effective Audit Measure as well as an overall combined score that must be met. The measure also requires states to direct additional emphasis to the factor(s) that they deem important to their state. An additional two points must be earned among any of the four factors to attain the overall passing score of at least 7.0. The factor scores are measured to the tenth percentage place or decimal place, as appropriate. See attachment B for additional information.

Table A provides the framework for the Effective Audit Measure. States must attain at least the minimum score for all four factors (column A), and two or more points above the combined minimum score of 5.0 (column B) to pass the measure (column C).

Table A
Effective Audit Measure Summary Score

Effective Audit Measurement		A	+ B	= C
Factor	Description	Minimum Score	State Directed	Total Score
1	Percent of contributory employers audited	1.0	X	1 + X
2	Percent of wages changed as a result of the audit	2.0	X	2 + X
3	Percent of the state's total wages that were audited	1.0	X	1 + X
4	Average number misclassified workers discovered per audit	1.0	X	1 + X
	Total	5.0	2.0	7.0

Table B provides four examples of state performance for the Effective Audit Measure. The first example demonstrates that the state's combined score for all four factors must be equal to or greater than 7.0. The second example shows that the state must attain at least the minimum passing value for all four factors, even when the total combined score exceeds 7.0. The third and fourth examples demonstrate states that passed the measure, showing different degrees of emphasis for the various factors.

Table B
Four Examples – Effective Audit Measure Results

Example	Factors #s (Minimum Scores)				Total (Min = 7.0)	Achieved Minimum for all 4 Factors?	Pass/Fail	Reason
	1 (1.0)	2 (2.0)	3 (1.0)	4 (1.0)				
State 1 Scores	1.0	2.2	1.1	1.4	5.7	Y	Fail	State failed to attain a minimum total score of 7.0
State 2 Scores	2.0	2.1	0.9	8.6	13.6	N	Fail	State failed to pass all four factor minimum scores
State 3 Scores	1.3	2.0	1.4	2.3	7.0	Y	Pass	State passed each factor minimum score and attained the minimum overall score of 7.0
State 4 Scores	2.0	3.3	1.0	3.0	9.3	Y	Pass	State passed each factor minimum score and exceeded the minimum overall score of 7.0

6. Administering the Effective Audit Measure in UI Performs. The SQSP, which each state negotiates annually with USDOL, will continue to be central to the administration of UI Performs and includes CAPs (see item Number 8 below).

- States will be expected to submit CAPs as a part of the SQSP when their annual performance on the Effective Audit Measure does not meet the ALP. States will be asked to provide quarterly updates for each CAP. USDOL will strive to attain uniform administration of CAP requirements among the states and regions.

7. Publishing Data. The results of the Effective Audit Measure will be published each year with state-specific data.

8. Effective Dates for Implementing Changes. USDOL will implement the Effective Audit Measure with the FY 2015 SQSP, which states will prepare using data from the calendar year ending December 31, 2013.

Table C
Implementation Schedule for the Effective Audit Measure

Calendar Year Data	Measure Calculated	SQSP Prepared	SQSP Program Year (PY)	SQSP Action
2010	Spring 2011	Summer 2011	PY 2012	None
2011	Spring 2012	Summer 2012	PY 2013	None
2012	Spring 2013	Summer 2013	PY 2014	None
2013	Spring 2014	Summer 2014	PY 2015	CAP

9. Action Requested. State Administrators are requested to distribute this document to appropriate staff.

10. Inquiries. Direct any inquiries to the appropriate Regional Office.

11. Attachments.

- Attachment A: Comments on UIPL 30-10: *Proposed Effective Audit Measure for State Unemployment Insurance (UI) Employer Audit Programs*
- Attachment B: New Core Measure - Effective Audit Measure