

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI/SQSP
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 22-10

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Selecting and Monitoring At-Risk States for Continuous Improvement and Compliance with First Payment Timeliness and First Level Appeals Promptness

1. Purpose. To provide information on the "high emphasis" that selected states will receive through the State Quality Service Plan (SQSP) process to improve first payment time lapse and first level appeals promptness, and to outline the process that will be followed beginning with the 2011 SQSP.
2. References. Section 303(a)(1) of the Social Security Act (SSA); Section 303(a)(3), SSA; Section 303(b)(2), SSA; 20 CFR Part 640 "Standard for Benefit Payment Promptness – Unemployment Compensation"; 20 CFR Part 650 "Standard for Appeals Promptness - Unemployment Compensation"; ETA Handbook No. 336, 18th Edition, Change 2 (December 2009).
3. Background. Monitoring state performance and ensuring compliance with Federal unemployment compensation (UC) law is one of the Department of Labor's (The Department) responsibilities. Section 303(a)(1), SSA, requires state law to provide "such methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure the full payment of [UC] when due." Section 303(a)(3), SSA, requires that state law must provide "an opportunity for a fair hearing ... for all individuals whose claims for [UC] are denied."

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The Department has long interpreted the above provisions to require state UC agencies to make timely payments on UC claims and to dispose of UC appeals promptly. The Department published regulations setting forth minimum standards of performance to achieve compliance in these two areas.

20 CFR 640 contains the criteria for timely processing of claims. In 20 CFR 640.3(a), the Secretary interpreted the requirement that UC be paid “when due” to require the state agency to “make full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.” The regulation sets forth specific numeric criteria for first payment time lapse.

Similarly, 20 CFR Part 650 contains the standard for prompt disposition of UC appeals. In 20 CFR 650.3(a), the Secretary of Labor interpreted the payment when due provision with respect to UC appeals to require that “all administrative appeals affecting benefit rights are heard and decided with the greatest promptness that is administratively feasible.” The regulation sets forth specific numeric criteria for promptness in disposing first level appeals.

The Department monitors state performance in meeting the compliance criteria and has noted some states with chronic underperformance in meeting the criteria. States that consistently did not meet these minimum performance standards are classified as potentially “at-risk” for loss of certification. The Department has addressed these deficiencies with each individual state through the SQSP process. While some states have tended to show improvement using that process, the underperformance of others requires greater action.

The Department will address this concern through a more intensive approach. It will identify states with chronic underperformance issues and require each such state’s SQSP to adopt recommended process improvements, or to develop others, beginning with the 2011 SQSP.

4. State Selection. State selection will be based on detailed performance data over the last five calendar years. Examination of the data will include an analysis of quarterly patterns relative to national averages and workload. Consideration will be given to particular state conditions and results achieved through corrective action plans. After evaluating the data, states with chronic underperformance issues over the last five years, corrected for the abnormalities of the current recession, and which have shown no significant recent performance improvement, will be targeted for high emphasis.

5. High Emphasis Process. Beginning with the 2011 SQSP, the Department will engage at-risk states to improve performance through multi-year planning which will be integrated with the standard SQSP process. The Department anticipates a collaborative process with the state to identify impediments to achieving performance standards; to identify action steps designed to improve performance; and to identify technical assistance strategies to support the states' successful implementation of the action strategies and achieve an outcome of improved performance. The action strategies and technical assistance activities will become part of the state's SQSP corrective action plan for those measures that have caused the state to be considered "at risk." Each such plan is expected to include some of the following steps:
 - a. Data Analysis. Each state and ETA may review time lapse and appeals promptness data from the state and other states of similar size and program characteristics where higher performance is achieved. The analysis will also include any data validation concerns of the at-risk state.
 - b. Process Review. States may be encouraged to engage in business process analysis to identify areas of weakness and to set the stage for reengineering processes that will improve performance. To support the state in these efforts, ETA may deploy a team of experts to conduct a thorough review of the state's administrative and business processes related to time lapse and appeals promptness. The review team may consist of ETA staff and other state experts, and may include contractor support. The team will use all tools available to assess state performance including state-of-the-art business process analysis and process mapping. Any resulting recommendations for improving performance must guide the state in developing or modifying its Corrective Action Plan. If the Plan is not based on these recommendations, the state must develop some other comparable plan in collaboration with the review team that is expected to show immediate improvement toward meeting compliance criteria.
 - c. Technical Assistance. ETA may provide technical assistance, including funding to support a mentoring relationship between an at-risk state and states that are strong performers; funding for targeted training of state staff; and/or other strategies identified in collaboration with the state.

- d. High-level Engagement. ETA leadership, including the Office of the Assistant Secretary and the Regional Administrators, may engage in discussions with agency heads and the Governor's office to focus on chronic underperformance and to reinforce the need for performance improvement.
 - e. Enhanced Monitoring and Follow-up. ETA may ask the state to provide detailed reports in area(s) of performance deficiency. ETA staff and other experts may conduct on-site visits to assess process changes, and whether these changes are improving performance.
 - f. Enhanced Resources. ETA may solicit and approve, subject to fund availability, Supplemental Budget Requests for performance improvement in targeted areas, which may include procuring contractor support for process analysis and mapping, or require a state use a portion of its administrative grant for targeted performance improvement activities. State may direct its own resources towards performance improvement efforts.
 - g. Grant Funds. If the above efforts in the High Emphasis Process fail to produce improvement, ETA will recommend that the Secretary commence proceedings under Section 303(b)(2), SSA, to withhold grant funds if the at-risk state is clearly not making sufficient efforts to utilize methods of administration designed to ensure payment of UC when due.
6. Action. State Administrators are requested to:
- a. Make this information available to appropriate staff;
 - b. Prepare to participate in the high-emphasis process if selected as an at-risk state; and
 - c. Share expertise about successful state performance in meeting the compliance standards if requested.
7. Inquiries. Questions should be directed to the appropriate Regional Office.