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**NONMONETARY DETERMINATIONS QUALITY DATA COLLECTION
INSTRUMENT**

CHAPTER I
INTRODUCTION

I. INTRODUCTION

The determination of a claimant's eligibility for unemployment insurance (UI) benefits is a critical UI program function. When issues arise that may affect a claimant's past, present, or future benefits, the adjudicator is responsible for determining the claimant's eligibility for those benefits. Such determinations may also affect an employer's liability for benefit charges, depending on the type of issue adjudicated. The adjudicator's work affects the rights of both claimants and employers.

Through the nonmonetary determination process, all necessary facts concerning an issue must be gathered from claimants and employers, or a reasonable attempt must be made to obtain such facts, and a determination is rendered to ensure that payments are made only when due. The Employment Security Manual (ESM) at Sections 6010-6015 (see Appendix B) clearly assigns to the state UI agency the responsibility for investigating claims, i.e., obtaining facts "as will be sufficient reasonably to insure the payment of benefits when due." Further, the responsibility of the state UI agency to obtain and record the relevant facts and to make eligibility determinations may not be shifted to the claimant or employer.

Evaluations of nonmonetary determinations are appropriate and necessary to ensure that this component of the UI program is properly administered. Because the determination to pay or deny unemployment benefits is a critical UI program activity, management must be kept informed about how well this function is being performed. This review guide was designed as the evaluation tool—known as the Benefits Timeliness and Quality (BTQ) review—to be used in determining whether a state UI agency's performance is meeting the standards which have been set by the Department.

The BTQ review serves two distinct purposes. First, the review assesses the overall quality of the nonmonetary determination process using a set of prescribed evaluation criteria. Each sampled determination is measured against federally established minimum criteria, evaluating the quality elements of the determination. Second, the review includes a data validation component to ensure that the state UI agency is reporting its nonmonetary determination activities in accordance with UI Reports (UIR) instructions contained in ET Handbook 401, UIR Handbook.

Data used to generate Federal reports on nonmonetary determination issue types and timeliness (ETA 207 and ETA 9052) must be validated to ensure the quality of the reported data. Data validation elements are now included in the nonmonetary determination review and a continuous measure of data validity is available without the need to select and review a separate sample for data validation purposes.

This handbook includes detailed instructions for evaluating the quality of the nonmonetary determination process from fact-finding to the written determination. Key elements of the process are assigned a numeric score to indicate the adequacy of the information obtained and its impact on other related elements, where applicable. A point system is used to evaluate each element. This point system allows state UI agencies to ascertain how well a function is being carried out, identify and analyze weaknesses, and determine how best to make program improvements. ***Each determination must receive 95 or 100 points to meet the quality standard. Measures for BTQ nonmonetary quality require that 75 percent of all nonmonetary determinations reviewed meet the passing score of 95 or 100.***

Although the nonmonetary determination process includes an inherent degree of subjectivity, the BTQ review instructions are designed to guide the reviewer toward producing a fair and unbiased assessment of the quality of the state UI agency's nonmonetary determination process. Further, these instructions are designed to provide uniform application of the review methodology so that results are consistent and can be replicated by any reviewer. ***It is essential that evaluations be conducted by individuals who have nonmonetary determination expertise and who have received training on the instructions contained in this handbook.*** In addition, the three-tiered (“tripartite”) review methodology assures that the review is conducted in an equitable manner. (See Chapter IV for details of the tripartite review process.)

CHAPTER II

**SCOPE OF THE QUALITY
REVIEW**

II. SCOPE OF THE QUALITY REVIEW

The quality review will focus on a quarterly sample of nonmonetary determinations drawn from the universe (i.e., the sample frame) of determinations reported on the Employment and Training Administration (ETA) 9052, Nonmonetary Determinations Timeliness report. Nonmonetary determinations from all "mainstream" UI programs (see "A" below) are included in the review. Nonmonetary redeterminations and those determinations from episodic programs, such as, Disaster Unemployment Assistance (DUA), and Extended Benefits (EB), are not within the scope of the review. Trade Readjustment Allowances (TRA) is also outside the scope of the review. The state UI agency must ensure that determinations from these program areas are excluded from the ETA 9052 reports so that the integrity of the data is not compromised. A procedure has been developed (see Chapter IV, B) to address those rare instances where some of these transactions are included in the sample frame and are drawn in the quality review sample(s).

The review also includes another component. The review sample is used to determine the validity of nonmonetary determinations reported for timeliness on the ETA 9052, Nonmonetary Determination Timeliness report. The sample is drawn from the universe of nonmonetary determinations reported for time lapse in the review quarter. Therefore, by using the same sample to validate the accuracy of reporting those determinations in required Federal reports, both tasks can be accomplished efficiently during the review.

All determinations selected in the sample are subject to the tripartite quality review system described in Chapter IV.

A. UI Programs Included in the Quality Review.¹

Nonmonetary determinations from the following claims categories are included in the quality review:

1. Intrastate UI, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemen (UCX), Combined Wage Claims (CWC), and Short-Time Compensation Claims (also known as Workshare);

¹ Because of limited sample sizes, determinations associated with some of the programs and nonmonetary issues cited may not be sampled for quite some time. The sample is randomized and is stratified by separation and nonseparation issues only. Some program types and issue types do not occur in significant numbers; hence the probability of these being sampled is greatly reduced. See Chapter VII, Glossary, for the definition of each program.

2. Interstate UI, UCFE, UCX, CWC claims;
3. Multi-claimant Labor Dispute Determinations; and
4. Multi-claimant "Other" Determinations, i.e., determinations which do not involve a labor dispute but affect a class of claimants from the same employer with a common issue.

The category will be recorded on the quality data collection instrument and entered into the UIR database by state UI agency staff.

B. Types of Determinations Sampled.

A random sample of all separation and nonseparation determinations issued in a given calendar quarter will be reviewed for quality based on the evaluation criteria contained in this handbook. State UI agency staff are encouraged to develop their own internal guides to complement the guidance contained in this handbook. The use of a state UI agency's guide during the review will promote greater consistency among reviewers.

The nonmonetary issues included in the quality review are:

1. Separation issues related to circumstances surrounding the claimant's separation from his/her job. Both "voluntary quits" and "discharges" fall under this category.
2. Nonseparation issues related to the requirements for continuing eligibility for unemployment benefits. All issues except voluntarily leaving work and discharges from fall under this category. Examples of nonseparation issues are being able and available to work; state UI agency work search requirements; filing claims and reporting as directed by the state UI agency; alien status; school employees between/within terms; professional athletes; disqualifying/deductible income; unemployment status; issues identified and adjudicated by Benefit Payment Control (BPC) (except uncontested earnings identified through crossmatch); labor disputes; other multi-claimant issues; refusal of profiling services; and others that are considered to be special statutory categories.
3. The nonmonetary codes required for the review (listed below) may not match the internal codes used by the state UI agency; however, the state selection routine is programmed to roll all state-specific codes into the appropriate codes required by the review.

Separation Issues:

- 10 Voluntary Quit
- 20 Discharge

Non-Separation Issues:

- 30 Able/Available
- 31 Reporting Requirements
- 40 Work Search
- 50 Disqualifying or Deductible Income
- 60 Refusal of Suitable Work/ Failure to Apply/Accept Referral
- 70 JS Registration
- 73 Worker Profiling and Reemployment Services
- 80 School Employee Between/Within Terms
- 81 Alien Status
- 82 Professional Athlete
- 83 Unemployment Status
- 84 Seasonality
- 85 Removal of all or part of a disqualification
- 86 Fraud Administrative Penalties

Multi-claimant

- 90 Labor Dispute
- 99 Other Multi-claimant

C. Identifying Nonmonetary Issues

A nonmonetary issue is an act or circumstance which, under state law, is potentially disqualifying. The circumstances which constitute issues to be adjudicated and reported on the ETA 207 and ETA 9052 are identified in ET Handbook 401.* Generally, it is only with reference to these circumstances that the word "issue" is used in connection with a UI nonmonetary determination. It is important not to confuse questions normally asked during the claimstaking process with the fact-finding done in association with a nonmonetary determination issue.

*The following excerpt from ET Handbook No. 401 is cited below for ease of reference:

AR207, NONMONETARY DETERMINATION ACTIVITIES²

² Excerpt from ET Handbook 401, 4th Edition, Section I. (E) (1a&b), pp. I-4-3 to I-4-5, and I-4-11 .

1. Nonmonetary Determinations. A determination made by the initial authority based on facts related to an "issue" detected:

- which had the potential to affect the claimant's past, present, or future benefit rights; and
- for which a determination of eligibility was made.

a. The following situations constitute nonmonetary determinations and should be reported:

- (1) Determinations made because of misrepresentation or fraud reportable on form ETA 227, Overpayment Detection and Recovery Activities.

Note: Overpayment Notices on uncontested earnings detected by any method (e.g., crossmatch) are not reportable.

- (2) A claimant's separation for a reason other than a genuine "lack of work" which results in a nonmonetary determination. "Other than lack of work" includes such reasons as "laid off-too slow" or "failed to perform" and should be reported.*
- (3) A disagreement exists as to whether the claimant satisfied the conditions of an indefinite disqualification (i.e., until reemployed for a specific period or has earned a specific sum of money) that resulted in a nonmonetary determination.
- (4) Investigation of a claimant's explanation for late reporting that results in a nonmonetary determination.

b. The following situations do not constitute nonmonetary determinations and should not be reported:

- (1) Determinations made solely for deciding whether charges should be made to an employer's experience-rating account.
- (2) Routine exploration of facts or questioning claimants in association with the claimstaking process except under circumstances of disagreement. Examples of routine questioning or decisions not giving rise to a nonmonetary count are:
- (a) Claimant's acceptance of the claimstaker's conclusion that the week's earnings require a reduction in the benefit amount for that week.
 - (b) Claimant's acceptance of benefits for only a portion of a week claimed when the state law provides for reduced benefits in cases where the claimant was ill or otherwise unavailable to work during part of the week.
 - (c) A determination on whether or not a stated period of time elapsed since a disqualifying act, satisfying the disqualification. This is part of the function of taking claims.
 - (d) A determination on whether or not the claimant meets the minimum wage and employment requalifying requirement to establish a benefit year. This is part of the monetary determination and under no circumstances is it reported as a nonmonetary determination.

* This language is taken directly from Handbook 401, 4th Edition. Exploratory questions would need to be asked to distinguish between a claimant's separation due to a genuine "lack of work," and a claimant's separation due to a reason other than a genuine "lack of work."

- (e) A determination on the existence of and/or number of dependents. This is part of the monetary determination function and under no circumstances should be reported as a nonmonetary determination.
- (f) A determination on whether the claimant meets state requirements for establishing a subsequent benefit year (e.g., 30 days of bona fide work since exhausting a benefit series). This is part of the monetary determination function.

Nonmonetary redeterminations are outside the scope of the review. A nonmonetary redetermination is defined in ET Handbook 401 as:

A determination made under statute, regulation, or well defined policy specifically requiring reconsideration of a nonmonetary determination before the administrative appeal stage, and which affirms, reverses, or modifies a determination.

Nonmonetary Redeterminations are reportable only when all following conditions are met:

- a. The need for reconsideration arises as the result of a protest by an interested party requiring actual review of all facts on which the determination was based, or from the agency's own initiative based upon new or additional information;
- b. All pertinent evidence and records are actually re-examined, and
- c. A written redetermination notice is issued to the claimant and any other interested party and is recorded.

A redetermination will always relate to the benefit period applicable to the original determination. (Facts concerning a different period or different circumstances may raise new issues calling for a new nonmonetary determination).

Redeterminations do not include determinations which are changed due to periodic supervisory reviews in which errors may be corrected. These corrected determinations are not based on new or additional information or protest and should not be reported as redeterminations. Also, if the claimant objects to a nonmonetary determination, listening to a repeated earlier statement and explaining the determination does not constitute a redetermination. A redetermination can only be made as a result of either the receipt of new or additional information or a protest by the employer or claimant and must always result in a written determination upon reconsideration of the original determination which affirms, reverses, or modifies the original determination.

D. Elements to be Reviewed.

The review of nonmonetary determination quality is comprised of twenty-one elements, as well as time lapse and validity of reports data. Five of the review elements focus on the quality of the nonmonetary determination. All elements are addressed in more detail in Chapter V.

CHAPTER III

**PREPARING FOR THE
REVIEW**

III. PREPARING FOR THE REVIEW

The information provided in this chapter outlines the state UI agency activities required in preparation for conducting the quality reviews. The activities include identifying the appropriate sample frames from which the sample is drawn, validating the sample for compliance with the selection criteria, and assigning the cases to the tripartite quality review team.

SAMPLING METHODOLOGY

The sample frame, sample size, and sampling frequency for conducting nonmonetary determination quality reviews are summarized in this chapter. Appendix A provides detailed procedures for selecting nonmonetary determination samples.

A. Sampling Frequency.

The nonmonetary determination quality samples are drawn quarterly, as soon as possible after the close of the quarter to be reviewed. To assure timely completion of quality reviews, state UI agencies are encouraged to draw their samples on the first business day of the first month following the end of the review quarter. All reviews are to be completed and the results entered into the UIR database by the 20th day of the second month following the review quarter; i.e., May 20th, August 20th, November 20th, or February 20th.

B. Sample Frames.

Two populations of nonmonetary determinations comprise the respective sample frames from which nonmonetary determination samples are drawn. The first sample frame consists of all intrastate and interstate separation determinations reported for time lapse for the quarter. The second sample frame consists of all intrastate and interstate nonseparation determinations reported for time lapse for the same quarter.

C. Sample Sizes.

Sample sizes are set annually and depend on the volume of nonmonetary determinations reported to the Department on the ETA 9052 reports for the prior calendar year. States are classified as large or small based on this caseload. The Department notifies the states of the sample size classifications to states during January of each year. Large states are those that issued 100,000 or more nonmonetary determinations in the prior calendar year. Small states are those that issued fewer than 100,000 nonmonetary determinations in the prior calendar year. Once sample sizes are identified in January, the large state or small state classification must be used to complete all BTQ reviews within the upcoming

performance year, i.e., April 1 – March 31. Typically, the BTQ reviews are held in August, November, February, and May; nonmonetary determinations are evaluated when completed from April – June (August review), July – September (November review), and October – December (February review), and January – March (May review).

Large states will draw a minimum sample of 100 determinations (50 separation issues and 50 nonseparation issues) per quarter for review. Small states will draw a minimum sample of 60 determinations (30 separation issues and 30 nonseparation issues) per quarter for review. States must select additional sample cases in the subsequent quarter to make up for the cases that could not be scored because the case materials could not be found. For example, if during the review of a state's 50 separation cases, 3 were identified as "case material not found" and therefore could not be evaluated for quality, the separation sample selected for the following quarter would be 53 cases. If 2 of the 50 nonseparation cases were identified as "case material not found" and could not be evaluated for quality, the nonseparation sample selected for the following quarter would be 52 cases. States may access the "Show Sample Size" application located in the state UI agency's Sun system to determine whether additional cases must be selected in the subsequent quarter to make up for cases that were identified as "case material not found," since the "Show Sample Size" application screen allows states to view their sample size for each quarter. The state's Sun system is engineered by Sun Microsystems and houses the UI database, as well as the entire state UI application suites including Benefits Accuracy Measurement (BAM), Data Validation, Tax Performance System (TPS), and UIR.

States are not required to select additional sample cases in the subsequent quarter to make up for cases that were not included in the calculation of the nonmonetary determination quality score after being identified as "invalid" or "outside the scope of the review". States must review all cases selected for their quarterly samples and 1) score them, 2) determine that they cannot be scored because case materials cannot be found, or 3) determine that they are "invalid" or "outside the scope of the review" cases, which are not scored.

The nonmonetary codes used by the state UI agency may not match the codes required for the sample selection; however, the state selection routine is programmed to roll all state specific codes into the appropriate codes required by the review.

D. Sample Size Flexibility.

States must select and review their respective minimum sample size. However, to provide a higher degree of confidence in the results, states may, at their own discretion, increase the sample size above the minimum required. If the sample size is increased, reviews of **all determinations** selected must be completed and entered into the UIR database. Another option is to pull and review a totally

separate sample for state use.

E. Selecting and Identifying the Sampled Determinations.

Basic information or "skeleton" data that uniquely identifies each determination selected must be entered via the state UI agency's Sun system into the UIR database by the 15th of the first month following the end of the review quarter. Skeleton data will either be automatically loaded into the database as part of the state UI agency's sample selection program or will be manually entered by a data entry operator. Once all the skeleton information is entered for all determinations in the sample, the state UI agency will invoke a sample validation computer program, as described below, to verify that the determinations selected meet the parameters of a valid sample.

F. Validating the Sample.

Once the state draws its sample, **all required skeleton fields must be filled in order to complete the validation process before the quality review of the determinations.** The validation program compares the state UI agency's sample size against the caseload the state UI agency reported based on the prior calendar year's ETA 9052 reports, and it also examines prior quarter BTQ review results to detect any cases that could not be scored because the case material could not be found. The program also determines whether the sample selected is based on nonmonetary determinations made during the review quarter.

For a sample to be valid, it must meet the following criteria:

1. Nonmonetary determination dates must fall within the quarter sampled;
2. Sample sizes must not fall below the minimum number prescribed depending on state nonmonetary determination workload size, plus any additional sample cases that were required to be drawn to make up for cases in the prior quarter that could not be scored because the case materials could not be found; and
3. Identification numbers for the sample determinations in the same quarter cannot be duplicates.

If the minimum sample size does not correspond to the reported annual caseload (including prior quarter cases where the case material was not found) or if the determinations selected are not from the review quarter, the sample fails validation and an error report is generated. The state UI agency must correct the sampling program errors and rerun or reenter the corrected sample until it passes validation.

Once the skeleton data passes sample validation, the state UI agency will invoke a program to freeze or "lock" the data. After this process is complete, case results can be entered as soon as the review is completed and the official outcome is established. If this process is not completed -- i.e., if a state UI agency fails to load the skeleton data, and successfully validates the sample before reviewing the cases -- then a new sample may need to be drawn to ensure the data integrity of the sample.

G. Assembling the Case Review File

DO NOT BEGIN ASSEMBLING CASE REVIEW FILES UNTIL THE SAMPLE HAS BEEN VALIDATED AND THE SKELETON DATA ARE "LOCKED."

A case review file must be assembled for each determination selected for review in the sample. The case file, depending on the issue adjudicated, must contain a copy of the:

1. initial/additional claim, if applicable;
2. separation notice, if applicable;
3. formal written determination or a computer-generated copy, when required;
4. fact-finding documentation, and other relevant documentation such as doctor's certificate, notice of refusal of suitable work or referral to work from either the Employment Service (ES), One Stop Career Centers or an employer, pension information, alien verification documentation from United States Citizenship and Immigration Services (USCIS), etc.;
5. claim history record (all pertinent screens containing any documentation needed for review) including but not limited to the:
 - claimant's nonmonetary determination history
 - payment history showing all claimed weeks
 - comment screens, if any, showing electronic notes
 - screens showing claim type, date filed, work registration, etc.;
 - and
6. Data Collection Instrument (DCI) on which the data will be recorded.

ASSEMBLED CASE REVIEW FILE DOCUMENTS MUST NOT BE MODIFIED FROM THEIR ORIGINAL VERSION.



State UI agencies may wish to request Information Technology (IT) units to automatically generate copies of all relevant screens as a time-saving measure. Paper files are only necessary when participating in a review with other states. Documents used to determine eligibility, e.g., a doctor's statement used as documentation, must be included in the paper file or the information would have to be scored as Inadequate.

CHAPTER IV

**CONDUCTING THE
REVIEW**

IV. CONDUCTING THE REVIEW

A. Tripartite Quality Review System

This section provides a description of the tripartite nonmonetary determination quality review system, the procedures for conducting the reviews, and the method for reconciling scores. Each quarter the samples selected by the state UI agency will be reviewed by a team comprising nonmonetary determination evaluation experts using the tripartite quality review system.

The core requirements of the tripartite quality review process include the following:

1. Each nonmonetary determination in the sample must be independently reviewed and the scoring for each element agreed upon by two individuals with nonmonetary expertise.
2. Each state must be involved in the review of its own sample.
3. The regional office staff will participate annually, during the performance year (between April 1 – March 31), in at least one tripartite review for each state in the region.
4. States must conduct a tripartite quality review for each quarter during a performance year and participate in at least one cross-regional review during a performance year.

The Tripartite Review Process Requirements

1. Identifying Review Teams.

In at least one quarter of each performance year, a cross-regional review must be performed for each state by a review team comprising one BTQ expert from the state being reviewed, one BTQ expert from another state, and one Federal BTQ expert. If resources permit, this team composition may be used for each quarter.

The tripartite quality review team may conduct on-site or off-site reviews for the other three quarters using three BTQ experts, preferably with staff from the state being reviewed and other state(s). Selecting the review

option requires advance consultation between the state staff and regional office staff.

2. Assigning Cases.

Sampled cases selected for review must be assigned according to the tripartite review option being used for the quarter. If the review is off-site, copies of the sampled cases must be mailed directly to the other state or regional office reviewers.

Each state participating in a tripartite review must provide copies of state law, policy, procedure, and precedent appeals cases, as well as the sample selection sheet, for BTQ expert review and examination. These items, along with all relevant case materials (e.g., claimant payment history, weekly certifications), must be available during the review period, i.e., during the period or week that the review is being conducted. If the information is not readily available, states may be given the opportunity to provide the required information during the review period; however, a state's inability to provide the necessary information during the review period may impact the scoring of a nonmonetary determination(s).

3. Reviewing and Scoring Cases.

Each state must complete the first review of its sampled cases before a review period. To ensure complete objectivity, and that each case at a review is scored independently from the prior score, nonmonetary determination case files must not contain the score sheet of the first reviewer. Score sheets provided for the second reviewer to record the second reviewer's score results may contain pre-filled "skeleton" data, since the data in those fields cannot be changed; however, the score sheet must not contain any other pre-filled data, since elements must be independently reviewed.

The scores of the first reviewer must not be disclosed to the second reviewer before his/her completion of independent review of the same cases.

Once the two reviews are completed, the two reviewers must compare their results element by element. The two reviewers must agree on the outcome of each element evaluated before an official score is entered into the database. The two reviewers must collaborate and try to settle any differences in elements 1 – 21. Subsequent to collaborating, and if the reviewers do not agree, the case must be provided to the tie-breaker for an independent evaluation and reconciliation with one of the other reviewers.

The total score for determining nonmonetary determination quality is based on a 100 point scoring system. Five quality elements are evaluated (elements 17 through 21 on the revised DCI), and the alpha and numeric score should be recorded on the DCI. Elements 1 through 16 are data validation elements. The score of certain elements directly affects the score on other related elements. For example, if the adjudicator failed to obtain or make a reasonable attempt to obtain relevant and critical information from claimant/employer/others, the appropriate element is scored "not obtained." Because the missing information is critical, the proper application of Law³ and Policy is questionable, at best, and a score of only 30 out of a potential maximum of 45 points for law and policy is allowed.

Although data validation elements are not assigned a numeric value, they must be reviewed and evaluated to ensure the state UI agency's reporting accuracy. They require the same review process as the quality elements. Any element found to be incorrect must be appropriately noted on the DCI and an explanation must be recorded in the comments section. For example, reviewers must record comments regarding an incorrect issue detection date, or a date on determination to assist states in improving the accuracy of these elements.

4. Reconciling Scores

If the first and second reviewers agree on the outcome of every element, or the first reviewer agrees with the score of the second reviewer, then the first reviewer is not required to discuss the score outcome with the second reviewer, since there is nothing to reconcile. However, when the two reviewers disagree on the outcome for any one of the elements evaluated and cannot reconcile the outcomes, that case will be independently reviewed by the third reviewer. If a third review is required, any state (other than the state being reviewed) or Federal BTQ expert may complete a third review. The third reviewer must not be informed of the scores of the first and second reviewers. When the third reviewer completes his/her review, all three reviewers must discuss their results for each disputed element and their reasons for the results. This process provides each reviewer with the opportunity to convince (based on supportable evidence from the case materials) the other reviewers to alter their results. At least two of the three reviewers must be in complete agreement on the results for each of the elements.

The state receives the score of the majority as the official score for the case, i.e., the score becomes official once two reviewers agree on every

³ "law" includes statutes, regulations, or any other formally issued policy.

element. The scoring of all nonmonetary determinations included in the sample must be completed and become official during the review period. The official score must not be altered once the reconciliation process has been completed, the score has been settled, and the review period has ended. The state will enter the official score for each reviewed case into the UI Required Reports (UIRR) database for transmittal to the National Office, and, at that point the results are regarded as final.

5. Automatic Calculation of Score.

Review results for each case are entered on a hard copy score sheet by the review team. Once the case outcomes are resolved through the tripartite review, the official outcome is entered into data entry screens on the state UI agency's Sun machine. It is not necessary to manually calculate the quality score for each case reviewed. When all the data are entered for a completed case and the case is saved in the database, a review edit module is initiated to ensure that the entry for each element is acceptable. If any unacceptable entries exist, warnings will be displayed. Cases cannot be transmitted until all errors have been corrected. The database is then updated with the completed case data. At the time all case data are transmitted to the National Office UIRR database, a score is calculated for the review period and displayed on the state UI agency screen.

6. Retain All Case Reviews.

Current requirements for state UI agency retention of reported data apply. Hard copies of the DCI from all reviewers may be retained by the state UI agency for future reference. This information will be helpful in identifying and resolving any inconsistencies in scoring outcomes and in reviewing data validity questions.

7. Use of Sample Data.

Nonmonetary determination performance will be tracked over time to determine, among other things, trends in performance, problems with particular facets of the nonmonetary process, timeliness of nonmonetary determinations, etc. Each quarter's results will be compared to prior periods of performance to determine whether improvement has occurred, particularly if interventions were introduced by the state UI agency to correct identified performance deficiencies. The data may also be used by state and Federal managers to determine whether factors such as fluctuations in the business cycle, changes in personnel, changes in administrative procedures, technological changes, or other conditions affect nonmonetary determinations performance.

B. Completing the Data Collection Instrument

Each case will be reviewed and completed in its entirety, with two exceptions:

1. when case material cannot be found for a sampled nonmonetary determination; or
2. when a case is selected that should not have been included in the sample frame because it is established that the case is either:
 - (a) invalid because it does not meet the definition of a nonmonetary determination as described in the ETA 207 reporting instructions contained in ET Handbook 401 (see page I-4-3), e.g., BPC crossmatches on uncontested earnings, or
 - (b) outside the scope of the review, e.g., nonmonetary redeterminations, DUA, TRA, or EB.

Although nonmonetary redeterminations are not evaluated, they are considered valid for estimating the number and percentage of cases meeting the data validity criteria. If a nonmonetary redetermination is selected in the sample, the reviewer will enter "N" in element 7, and "01" in element 8, to signify that the case is a nonmonetary redetermination. No further review of that case is necessary.

Cases identified as outside the scope of the quality review or invalid and cases not scored because the case material cannot be found are NOT included in the calculation of quarterly nonmonetary determination quality scores. Built into this calculation is a function that determines the threshold which the number of cases in these situations cannot exceed in order for the quarter's results to be statistically reliable. Significant numbers of invalid cases drawn in the sample may signify a state UI agency problem with identifying issues that do not meet data validation criteria, i.e., are not countable for workload.

A message will be generated stating that the scores for the quarter are inconclusive if either of two conditions is met:

1. If the total number of separation cases and/or the total number of nonseparation cases that are not scored because the case material cannot be found, or because they are outside the scope of this review, or because they are "invalid," exceeds 16.7% of either sample (separation or nonseparation) for small states and 25% of either sample (separation or nonseparation) for large states.
2. If the number of separation cases and/or the number of nonseparation cases that are not scored because the case material cannot be found

exceeds 10% of the sample (separation or nonseparation). This 10% threshold for cases that are not scored because the case material cannot be found applies separately from the 16.7% and 25% thresholds for all non-scored cases.

States will be required to select additional sample cases in the subsequent quarter to make up for the cases that could not be scored because the case materials could not be found.

The UI automated system will generate a "show quarterly score" screen which includes the number and percentage of invalid cases. The screen will display:

1. Total cases drawn in the sample.
2. The number of cases for which the case material was not found.
3. The number of cases that were outside the scope of the review or were invalid cases.
4. The total number of cases scored.
5. The separation and nonseparation determinations scores.
6. If applicable, a message stating that the scores for the quarter are inconclusive because the total number of cases not scored exceeded either or both of the thresholds for calculating statistically reliable results: the 16.7% and 25% threshold for all non-scored cases and the 10% threshold for cases not scored because the case material is missing.
7. For data validation:
 - (a) the number of invalid cases in the sample; and
 - (b) the percentage of sampled cases that is invalid.

All of this information is accessible in the UI database, where it is stored in the ar9056t, the "transmit" table.

FORMULAS FOR COMPUTING WEIGHTED SCORES

Notation:

N_{sq} = the population size for separations (ETA 9052, total intrastate + interstate separations) in quarter q

N_{nsq} = the population size for nonseparations (ETA 9052, total intrastate + interstate nonseparations + total multi-claimants) in quarter q

n_{sq} = the sample size for separations (excluding “no issue” cases, redeterminations, and cases for which materials were not found) in quarter q

n_{nsq} = the sample size for nonseparations (excluding “no issue” cases, redeterminations, and cases for which materials were not found) in quarter q

x_{sq} = the number of scored separation sample cases with a “passing” quality score in quarter q

x_{nsq} = the number of scored nonseparation sample cases with a “passing” quality score in quarter q

The quarterly quality score for separations, expressed as a percentage, is computed by:

$$P_{sq} = \frac{x_{sq}}{n_{sq}} \times 100$$

The quarterly quality score for nonseparations, expressed as a percentage, is computed by:

$$P_{nsq} = \frac{x_{nsq}}{n_{nsq}} \times 100$$

The weighted annual quality score for the separation samples is computed by:

$$P_{ws} = \sum_{q=1}^4 \frac{N_{sq}}{N_s} P_{sq} ,$$

where N_s is the sum of the separation populations for the four quarters.

The weighted annual quality score for the nonseparation samples is computed by:

$$P_{wns} = \sum_{q=1}^4 \frac{N_{nsq}}{N_{ns}} P_{nsq} ,$$

where N_{ns} is the sum of the nonseparation populations for the four quarters.

If sample cases have been excluded (case materials missing, “no issue” cases and redeterminations), then this will be reflected in the population weighting for the remaining subgroup k .

The weighted annual quality score for the separation samples is computed by:

$$P_{sk} = \frac{X_{sk}}{N_{sk}} = \frac{\sum_{q=1}^4 N_{skq} P_{skq}}{N_{sk}} .$$

$$X_{sk} \text{ is estimated by } \hat{X}_{sk} = \sum_{q=1}^4 \frac{N_{sq}}{n_{sq}^*} x_{sq} , \text{ and}$$

$$N_{sk} \text{ is estimated by } \hat{N}_{sk} = \sum_{q=1}^4 \frac{N_{sq}}{n_{sq}^*} n_{sq}$$

where n_{sq}^* is the number of sample separations (excluding cases for which materials were not found) in quarter q .

The weighted annual quality score for the nonseparation samples is computed by:

$$P_{nsk} = \frac{X_{nsk}}{N_{nsk}} = \frac{\sum_{q=1}^4 N_{nskq} P_{nskq}}{N_{nsk}}$$

$$\text{where } X_{nsk} \text{ is estimated by } \hat{X}_{nsk} = \sum_{q=1}^4 \frac{N_{nsq}}{n_{nsq}^*} x_{nsq} , \text{ and}$$

$$N_{nsk} \text{ is estimated by } \hat{N}_{nsk} = \sum_{q=1}^4 \frac{N_{nsq}}{n_{nsq}^*} n_{nsq}$$

where n_{nsq}^* = the number of sample nonseparations (excluding cases for which materials were not found) in quarter q .

CHAPTER V

**THE DATA COLLECTION
ELEMENTS**

V. THE DATA COLLECTION ELEMENTS

The DCI is comprised of twenty-one elements. Criteria and instructions are provided below for recording the outcome of each element for each case selected in the sample.

Please note that each of the four "skeleton" or sample validation fields is identified. Because the "skeleton" fields must be pre-filled in order to determine the validity of the sample BEFORE assigning the cases to the review team, the reviewer cannot change the data in these fields. If any of the sample validation elements are found to be incorrect, the reviewer will record the element number and the correct data in the comments section of the DCI worksheet.

WARNING! These skeleton fields must be entered and "locked" into the Sun system to validate the sample before assembling or reviewing the records for the quality review. Failure to do so could result in an invalid sample, requiring a second sample to be pulled.



***HINT:** Many states have the capability to populate many other data elements on the DCI; this does not cause them to be skeleton fields. Regardless, states must provide a blank DCI for the second reviewer at tripartite reviews.*

ELEMENT 1 - IDENTIFICATION # (*Skeleton field*)

Enter the five (5) digit number that uniquely identifies the case by its sequence in the sample selected for review.

ELEMENT 2 - ISSUE CODE (*Skeleton field*)

Enter the two (2) digit issue code that identifies the issue for the case selected. See DCI for applicable codes.

ELEMENT 3 - CASE MATERIAL FOUND (Y/N)?

Enter the appropriate code to indicate whether case material for the selected case was found.

Enter:

Y = YES The case material was found.

N = NO The case material was not found. *If the case material was not found, enter this code and stop the review of the case.*

CAUTION! A copy of the written determination, by itself, does not establish that case materials were found.

"Case Material Found" means there must be a copy of the determination notice and all or some of the case investigation material, (e.g., the fact-finding documentation, claimant statement, facts from others, adjudicator notes from automated record, etc.) If you find any part of the case record in addition to the written determination, code the element Y (Yes), continue the review, and fail any elements for which documentation is missing. The case material may be completely paper documentation, completely annotated automated records, or any combination of the two.

ELEMENT 4 - DATE ON THE DETERMINATION (*Skeleton field*)

Enter the date (mmddyyyy) on the determination notice (which should be the date mailed), or, if no notice was required, enter the date payment was authorized, waiting week credit was given, or an offset was applied.

This element is used to validate that the time lapse for this case was correctly reported on the ETA 9052 report.

ELEMENT 5 - CORRECT DATE ON THE DETERMINATION (Y/N)?

Enter:

Y = YES The evaluator determines, after reviewing the case material, that the state UI agency correctly recorded the date on the determination (the date the determination was mailed), or, if no notice was required, the date payment was authorized, waiting week credit was given, or an offset was applied.

N = NO The evaluator determines, after reviewing the case material, that the state UI agency incorrectly recorded the date on the determination (the date the determination was mailed), or, if no notice was required, the date payment was authorized, waiting week credit was given, or an offset was applied.

ELEMENT 6 – CORRECTED DATE ON THE DETERMINATION

If element 5 is Y, leave this element blank

If element 5 is N, enter the correct date on the determination (the date the determination was mailed), or, if no notice was required, the date payment was authorized, waiting week credit was given, or an offset was applied.

ELEMENT 7 – CORRECT ISSUE CODE (Y/N)?

Enter the appropriate code to indicate whether, based upon review of the case documentation, the issue code in element 2 was the correct issue that was adjudicated.

Enter:

Y = YES The correct issue was adjudicated.

N = NO Based on review of the case material, there was: no issue (00), the issue was outside the scope of the review (01), or the incorrect issue was adjudicated.



HINT: If the correct issue was adjudicated, but there was a data entry error in entering the issue code in the automated system, this element must be coded “Y.” If the data entry error resulted in an incorrect written determination being issued, it will be addressed in the quality score

ELEMENT 8 - CORRECTED ISSUE CODE

If element 7 is Y, leave this element blank.

If element 7 is N, enter the correct issue code: 00 (for No Issue); 01 (the issue was outside the scope of the review); or see the DCI for other applicable separation or nonseparation codes.

For cases involving the incorrect separation or nonseparation code, enter:

(a) The code for the correct issue (other than "00" or "01") that should have been adjudicated;

- The alpha equivalent to "0" in elements 17 through 21; (i.e., "N," "N," "W," and "W," respectively);

and

- The remaining elements necessary to complete data validation and time lapse data collection.



HINT: Entering the alpha equivalent to "0" in elements 17-21 signifies that the case has failed nonmonetary determination quality because the reviewer concluded that the incorrect issue was adjudicated.

OR:

(b) Enter "00" if it is established that either no issue existed or the determination sampled was one with no potential to adversely affect the claimant's benefit rights, (e.g., chargebacks or any uncontested earnings identified by BPC or New Hire crossmatches). Stop the review of the case.

OR:

(c) Enter "01" if the case selected is outside the scope of the review (e.g., non-master multi-claimant determinations, redeterminations, EB, DUA, TRA, or a data entry error caused an incorrect date of determination in the automated system). Stop the review of the case.

Note: Definitions for nonmonetary determinations, including multi-claimant determinations, from ET Handbook 401, 207 Report (Nonmonetary Determination Activities) are described in Chapter II of this handbook.



HINT: Before an official ruling is made that there is no issue, or that the issue for the case selected is incorrect, or that the case is outside the scope of the review, or fails quality, the case must be independently reviewed by two reviewers, and the outcomes compared. If the outcomes differ, the case is subject to an independent review by a third reviewer and to a reconciliation process for establishing the official outcome.

If it is absolutely clear that the case under review was adjudicated (whether at the initial scoring of the case or at the second, or possibly third scoring of the case at a review) with an incorrect issue code (e.g., Element #7 is issue code 10, and subsequent scoring of the case at a review results in a finding that the correct issue code should have been code 20), then the instructions indicated above must be followed.

If it is unclear or cannot be determined based on available information whether or not the correct issue was adjudicated, then Element #7 would be “Y” and Element #8 would be left blank. In most cases, the quality elements would be scored down, as under these circumstances, information under at least one of the quality elements (i.e., Claimant Information, Employer Information, and/or Information from Others) is inadequate to ascertain the issue code under which the case should have been adjudicated. If the adjudicator met the minimum reasonable attempts criteria, the case would not be scored down for this reason.

If the case was adjudicated correctly, but due to a data entry error, the incorrect issue code was indicated, then the instructions in the “Hint” above must be followed.

ELEMENT 9 - INTRASTATE CLAIM (Y/N)?

Enter the appropriate code to indicate whether the case selected is an intrastate claim.

Enter:

Y = YES The case selected is an Intrastate claim.

N = NO The case selected is an Interstate liable claim.



HINT: Claim type is based on the status of the claim at the time the nonmonetary determination was issued.

ELEMENT 10 - PROGRAM TYPE: UI UCFE UCX

Enter the program type as described below.

UI = A state program that provides benefits to individuals financed (1) wholly from state trust funds (UI) or (2) partially from state trust funds and partially from UCFE and/or UCX program funds (joint UI/UCFE, UI/UCX, UI/UCFE/UCX claim).

UCFE = A claim based wholly on Federal civilian service or partially on Federal civilian service and partially on Federal military service (UCFE/UCX).

UCX = A claim based wholly on Federal military service (UCX only).

ELEMENT 11 - NONMONETARY DETERMINATION OUTCOME

Enter the appropriate code to indicate the nonmonetary determination outcome.

Enter A if the determination Allowed benefits.

Enter D if the determination Denied benefits.

ELEMENT 12 - OUTCOME REPORTED CORRECTLY (Y/N)?

Enter the appropriate code to indicate whether the outcome was correctly reported in the automated system:

Enter:

Y = YES The evaluator determines, after reviewing the claimant history file and case file, that the outcome of the nonmonetary determination (Allowed or Denied) was correctly reported in the automated system for statistical reporting purposes.

N = NO

The evaluator determines, after reviewing the claimant history file and case file, that the outcome of the nonmonetary determination (Allowed or Denied) was incorrectly reported in the automated system for statistical reporting purposes.



HINT: *If a claimant's benefits are denied or reduced, the outcome must be reported as a denial. An example of a reduction is a situation where a claimant is receiving a pension which reduces, but does not eliminate, the weekly benefit amount payable to the claimant. See ET Handbook 401, Section I-4-12, for an explanation of a denial of UI benefits.*

ELEMENT 13 - RESERVED FOR STATE UI AGENCY USE ONLY

An entry must be made in this field. However, the entry may be used to capture any information the state UI agency would like to have available for analysis, such as local office number, call center number, adjudicator identification, etc.

The field is limited to four alpha, numeric, or alpha-numeric characters.

The state may use the field to record a mixture of informational items, as in the following example:

- (1, 2) = The first two digits -- number of weeks paid during the review quarter (01 through 13)

- (3) 1 = The employer returned the initial request for information.
2 = The employer's representative returned the initial request for information.
3 = The initial request for information was not returned.

- (4) 1 = The determination was appealed and upheld.
2 = The determination was appealed and overturned.
3 = The determination was not appealed.

The coding for a case might be 0033, indicating no weeks paid, the initial request for information was not returned, and the determination was not appealed. The individual elements of the field can be queried separately, as is done with elements in the BAM database.

The information captured may be changed on a quarterly basis.

ELEMENT 14 – ISSUE DETECTION DATE

Enter, from state UI agency automated claimant or nonmonetary determination history file or import date for IB-1, the date (mmddyyyy) the state UI agency first became aware or should have become aware of the issue to which the nonmonetary determination applies. The first working date is the date to be entered. For example, if an issue is detected on a Sunday when the claimant is certifying for a week of benefits, the date to be entered as the issue detection date is the first working day following the certification. This would be the date the state UI agency had knowledge and control of the issue. This date is critical because it is used in the calculation of nonmonetary determination time lapse as reported on the ETA 9052 report.

The exception to the criteria is a case where the claimant fails to file a timely certification and state policy requires a week be claimed before making a determination. In such cases, the detection date for the original unresolved issue(s) is the date the claimant subsequently files an additional or reopened claim.

The issue detection date cannot precede the date the claimant becomes monetarily eligible.

Except in backdating requests, the issue detection date cannot precede issue occurrence date.

Note: Refer to ET Handbook 401, Unemployment Insurance Reports Handbook, for additional information regarding issue detection date.



HINT: Monetary qualifying requirements in state laws require sufficient wages to establish a benefit year, which grants a claimant benefit rights. In the absence of a benefit year, there are not yet any issues that require a determination of eligibility (i.e., nonmonetary determination), since an issue must have the potential to affect past, present, or future benefit rights. In other words, a countable issue cannot be adjudicated before the claim is monetarily eligible.

ELEMENT 15 – CORRECT ISSUE DETECTION DATE (Y/N)?

Enter:

Y = YES The evaluator determines, after reviewing the case material,

that the state UI agency correctly recorded the issue detection date on the claimant and/or nonmonetary determination history file.

N = NO The evaluator determines, after reviewing the case material, that the state UI agency incorrectly recorded the issue detection date on the claimant and/or nonmonetary determination history file.

ELEMENT 16 – CORRECTED ISSUE DETECTION DATE

Leave blank if element 18 is Y.

If element 18 is N, enter the correct issue detection date (mmddyyyy).

ELEMENTS 17 THROUGH 21: NONMONETARY DETERMINATION QUALITY SCORING

Fact-finding -- Elements 17 through 21 are the fact-finding elements for the nonmonetary determination quality review. The burden rests with the state to discover the reason for the claimant's separation from work and his/her eligibility for benefits. The determination will be based on the application of the state law to the material facts obtained.

The intent of Element 17 (Claimant Information) and Element 18 (Employer Information) is to ensure that the adjudicator gathered (or made a reasonable attempt to gather) all the material facts—that is, the relevant and critical facts necessary to resolve the issue adjudicated. The material facts must be of sufficient quality and quantity to support the findings and rationale for the determination.

The adjudicator must also have gathered (or made a reasonable attempt to gather) all material facts from other parties (Element 19, Facts from Others), who possess information which is relevant and critical to resolve the issue adjudicated. These facts include, but are not limited to, labor market information and local commuting patterns. Labor market information used in reaching a conclusion must be documented in the adjudicator's reasoning. The relevant and critical facts gathered from others, combined with the facts from the claimant and/or employer, should form the basis for the determination rendered.

In an effort to be more efficient, some states have implemented systems that issue nonmonetary determinations on certain limited issues solely on the basis of claimants' responses about their eligibility into an automated system without adjudicator intervention. Issues concerning a claimant's availability for work, or search for work, are often adjudicated in this manner in those states. *Automated nonmonetary determinations must meet all quality guidelines outlined in Chapter*

V. Most importantly, facts must lead to only one conclusion on the issue; an adjudicator must intervene if they do not. The state must also ensure that:

- The fact-finding contains all relevant and critical facts related to the issue, that the automated system confirms the claimant's response and gives the claimant an opportunity to change the response.
- The automated system advises the claimant that his/her response raises an issue that will affect UI entitlement.



HINT: All corresponding documentation used to establish that an automated system confirms the claimant's response, gives the claimant an opportunity to respond, and advised the claimant that the response raises an issue that will affect UI entitlement, must be included in the case file. In the absence of the documentation, Element 17 cannot be "A."

Claimants' rights must be protected as states seek efficiencies through the use of automated systems. State agencies have responsibility for interpreting state UI eligibility requirements and cannot shift the burden to the claimant.

Documenting material facts is essential for a quality determination. There are times, however, when necessary information is not available. Consequently, full credit will be given for an element when information was not obtained if the documentation establishes that a reasonable attempt was made to obtain the information.

For BTQ review purposes, minimum criteria have been established to define a "reasonable attempt" to obtain the material facts from the parties to the claim. This also includes reasonable attempts to provide rebuttal opportunity when necessary. The minimum criteria defining "reasonable attempts" to obtain information in the fact-finding process (including rebuttal opportunity) are described below.

Failure of the state UI agency to meet these minimum criteria causes the element to fail. Many state UI agency's employ procedures that exceed these minimum criteria and they are encouraged to continue to do so.

MINIMUM CRITERIA TO SATISFY REASONABLE ATTEMPT(S) REQUIREMENTS

Definition of Reasonable Attempt

A reasonable attempt relates to an effort(s) to obtain information from a party in conjunction with the adjudication of an issue. For BTQ purposes, the methods followed and information documented in the case file are consistent with ESM considerations.

The following guidance relates to whether a reasonable attempt to obtain needed information was made and properly documented by the adjudicator. Once information is obtained, the quality of the fact-finding itself is evaluated under the applicable fact-finding element (whether a reasonable attempt was made is no longer in question).

All attempts made to obtain information from a claimant, employer, or third party must be documented, i.e., information must be RETRIEVABLE FROM A RECORDING OR WRITTEN DOWN IN THE CASE FILE. In most instances, interested parties will include claimants and employers, and at times may include other third parties. An attempt to obtain information may be made in writing, by telephone, or through some other electronic means, including attempts by fax, e-mail, or any other electronic method, as appropriate.

If a party provides some but not all of the relevant and critical information needed for adjudication of the issue (for example: unanswered questions on a questionnaire, or failing to respond to questions left on a voice mail, or answering machine) additional attempt(s) to obtain the information may be necessary. As long as a party has participated in the adjudication process, if other information is needed to make a quality determination, the state has a responsibility to obtain the needed information.

Requests for Information

Employer Notice of Initial Claim

States issue a Notice of Initial Claim (Notice) to the employer(s) when a claim is filed and the Notice may or may not ask the employer for the reason for separation of the individual filing the claim. Some states include only wage information in the initial Notice. The reasonable attempt criteria will assess whether the *attempt* to obtain information was made and properly documented.

Some states combine the Notice with a questionnaire which requests specific information regarding the reason(s) for separation and provides a deadline by which the employer must respond. This type of request incorporates essential questions necessary for a determination of eligibility, and it is sent to employers

at the time an initial claim is filed or at the time a claimant is separated from employment (e.g., files an additional claim during the continued claim series).

The employer Notice may be considered a reasonable attempt to obtain information from the employer if:

- 1) the Notice contains the date that it was mailed, e-mailed, or otherwise sent through some other electronic or other documented method and the deadline by which the party needs to respond; and
- 2) the Notice specifically requests information regarding the claimant's reason for separation (with or without an accompanying questionnaire); and
- 3) the Notice indicates the consequences for the employer's failure to respond to the Notice by the specified deadline; and
- 4) the Notice requesting such information is in writing (including both paper and electronic written notices); and
- 5) if the Notice was faxed, e-mailed, or otherwise sent through some other electronic method, it must also include the time the Notice was sent and the time the Notice is due (i.e., deadline for response).

If the employer has not returned the Notice to the state by the initial deadline, an additional attempt to obtain information is necessary.

A request for information made to an employer's designated representative is treated the same as a request made directly with the employer.

Note: It is possible that the Notice could request information on nonseparation issues. In this case, the same above criteria apply.



HINT: *If the employer has not responded to the Notice, the additional attempt(s) to obtain information may be by telephone, fax, e-mail, or any other electronic medium.*

If the employer responds to a request for information (the Notice, a written

request, telephone call, etc.) and the information is complete and sufficient, further contact with the employer would not be necessary. However, if the information is not complete or not sufficient, the state must attempt to obtain any clarifying information necessary in order for the employer information element to be scored as “adequate” (see page V-12 of this Handbook).

Further, unless an employer’s communication explicitly states or conveys that the employer will not participate or is no longer participating in the adjudication process and is unwilling to provide any information, it is the state UI agency’s responsibility to contact the employer for additional information. If the employer’s communication is vague or ambivalent about its willingness to provide requested information, the employer must be contacted in order to meet the quality standard.

For example, if an employer states: “No information available at this time,” or “No protest,” it is not clear whether the employer has information that may be obtained by the state UI agency to make its determination. Even though the employer may not be protesting the claim, the state UI agency still has a responsibility to obtain information to make the determination of eligibility. The employer’s choice not to protest the claim does not remove the UI agency from taking the initiative in the discovery of information. This is an agency responsibility and cannot be passed to the claimant or employer.

Written Requests for Information

States issue written requests for information to employers, claimants, and third parties. The written request may or may not include questions. If questions are included with the request, the questions will be evaluated for overall adequacy when the questions have been answered by the claimant, employer, or third party. A copy of the request, and all correspondence written during the course of the investigation, and documentation/evidence that supports the action taken, must be present (or referenced) in the case file.



HINT: States may choose to identify the issue being investigated, and include issue-specific questions in the request for information. States are responsible for identifying the correct issue being investigated and obtaining the necessary facts to make a quality determination on that issue.

If the state adjudicator makes an attempt to obtain information in writing, such request for information must advise the party that information is needed to determine an issue and that failure to respond by a specified date will result in a determination based on the information already on file. All written requests for information must contain the date that the written request was mailed, e-mailed,

or otherwise sent, and the date (deadline) by which the party needs to respond.

Written requests that are faxed, e-mailed, or otherwise sent through some other electronic method must also include the date and time sent and the date and time the request is due (i.e., deadline for response). This information may be documented on the written request itself or documented in the case file.

Telephone Requests for Information

Sometimes a state adjudicator will make an effort to obtain information by telephone. In those instances, the adjudicator will need to determine whether it is appropriate to leave a message for a party on an answering machine or voice mail. If a message can be left on an answering machine or voice mail, the state's message must advise the party that information is needed to determine an issue and that failure to respond by a specified date and time will result in a decision based on the information on file. The date and time by which to return the call, and complete agency contact information, e.g., name of person to call and the phone number, must be provided to the intended party.

State adjudicators need to use their judgment to determine whether it is appropriate to leave a message with a live individual (as opposed to an answering machine or voice mail) other than the claimant or the employer or other interested party. If a message is left with someone other than the intended party, that individual must be advised that information is needed to determine an issue, and failure by the intended party to respond by a specified date and time will result in a determination based on the information on file. The deadline (date and time) by which to return the call and complete agency contact information, e.g., name of the person to call and the phone number, must be provided to the individual who is taking the message.

Scheduled Fact-Finding Interviews

State UI agencies that notify claimants and employers in advance (such as by mail/e-mail/fax/other electronic method) that a fact-finding interview will be held on a specified day and time, a reasonable attempt to obtain information will be considered to have been made if the notification advises the party of: 1) the conditions under which the interview will be conducted, i.e., the date, time, and whether the interview will be in-person, by telephone, or other means; 2) options the party may pursue if unavailable on the scheduled date and/or time; and 3) the consequences for failure to participate (i.e., a determination will be based on the information on file). A copy of the fact-finding interview notice (or a facsimile) or other appropriate documentation that serves to demonstrate the state's attempt to schedule and conduct the interview must be included in the case file; and if a party or both parties have not appeared, an additional attempt to obtain information, by any method properly documented as described in this section, has been made. A copy of the fact-finding interview notice (or a facsimile), or

other appropriate documentation that serves to demonstrate the state's attempt to schedule and conduct the interview must be included in the case file.

Other Types of Requests for information

States may use other methods to attempt to obtain information. For example, a claimant is advised by an automated system or by recorded message that it is necessary to contact the state UI agency before benefits can be paid. If a party is advised to contact the state agency, it will be considered to be a reasonable attempt to obtain information, provided that the instructions to contact the agency include: 1) the date and time (if applicable) by which the agency must be contacted; 2) notice to the party that failure to respond by a specified date and time will result in a determination based on the information on file and may result in a denial of benefits; and 3) if the party has not responded to the request for information, an additional attempt to obtain information needs to be made in order for the reasonable attempt requirement to be met.



***HINT:** Once the party has been contacted and has provided information to the state, the quality scoring evaluates the adequacy of the information obtained and the reasonable attempt criteria are no longer in question.*

Additional Attempt(s) to Obtain Information

An additional attempt to obtain information is necessary only when the party has not responded to a request for information, and information is needed to properly adjudicate the issue(s) on the claim. The agency has the responsibility to make the additional attempts to obtain information so that the issue(s) on the claim can be properly adjudicated.

This additional attempt to obtain required information must be made after the original deadline for the party to respond. It applies to all requests for information generated by any paper or electronic media. Any contact actually made with the party, whether within the original deadline or not, must be properly documented.

The additional attempt(s) to obtain required information applies equally to claimants if they have not responded to a first request for information.

Required Documentation in Case File

Written Requests

If an attempt to obtain information is made by way of a written request, the claim file must include a copy of the written request (or a facsimile) or other appropriate case documentation that serves to demonstrate the state's attempt to obtain information, and documentation must establish that the party was given the opportunity to respond by the deadline (i.e., the party's response or lack of response must be documented).

Telephone Requests

If an attempt to obtain information is made by telephone, documentation in the case file must indicate: 1) a message was left on an answering machine, or voice mail, or with an individual, or that no message could be left, 2) if the adjudicator spoke with someone, the name of the individual, and, if appropriate, the individual's title or relationship to the party, 3) the date and time that the message was left, and 4) the deadline (date and time) that was given to the party to respond to the agency request. If the party responds, the information obtained must be documented, or it must be documented if no message could be left. The reason a message was not or could not be left must also be included. If the party does not respond before the state making its determination, the documentation in the case file must indicate that the party did not respond to the state's request for information by the established deadline. For example, a notation that indicates "no response" is sufficient provided that the steps noted above are clearly documented so that it is clear an opportunity to respond was provided to the party.

Fact-Finding Interview Requests

If an attempt to obtain information is made by way of a scheduled fact-finding interview and a party fails to contact the state or fails to answer a call from the state on the scheduled day/time, the claim file must include: 1) a copy of the fact-finding interview notice (or a facsimile) or other appropriate documentation that serves to demonstrate the state's attempt to schedule and conduct the interview, 2) and documentation of the time the adjudicator placed the call to the party; and 3) documentation of the party's failure to contact the agency or answer the agency's call on the scheduled day/time.

Other Requests

If an attempt to obtain information is made through an automated or recorded message that instructs a party to contact the agency/provide information, documentation in the case file must include the date and time that the recorded message was provided, and the date and time that the intended party was instructed to contact the agency. Furthermore, documentation must establish that the claimant was given the opportunity to respond by the deadline (i.e., the intended party's response to the attempt to get information, or lack of a response

must be documented).

Note: These are general guidelines; each case must be scored on its own merits, and each case can present unique circumstances that could justify an exception to these guidelines.

Deadlines for Responses

BTQ criteria include a requirement that all parties **must** be provided at least two business days to respond to a request for information. When a request for information is being made either verbally or sent electronically (for example, by telephone, e-mail, fax, or any other electronic method), the deadline must never be less than two business days from the time of the request.

For example, an adjudicator requests information from a party on Tuesday, 4 p.m. The deadline for the party to provide this information can be no earlier than Thursday, 4 p.m.

The claim file must contain documentation that demonstrates two business days were provided to the party before the determination was issued. Documentation must indicate the day and time when the message was left, and indicate the party was advised that a response must be received within two business days. The message must indicate what information from the party is needed and, as appropriate, the consequences of the party's failure to respond timely. Documentation in the claim file must demonstrate that the party was given the opportunity to respond by the deadline; otherwise, the quality score will be negatively impacted (i.e., the case-applicable section will be scored as Inadequate, and Element 20, law/policy, will be scored as Questionable).

BTQ reviewers will use their discretion and good judgment in reviewing the criteria for cases that involve determinations issued a minute(s) before a deadline. As a practical matter, for example, there may be times when an adjudicator will make/input the determination a minute(s) before a deadline for a valid reason. The tripartite review has been designed to allow state program specialists to come to consensus about whether such a case met quality. These types of cases should be exceptions. A high volume of these types of cases would call into question a state's practices and procedures.

Deadline for Mailed Requests

Any deadline set for receipt of information before a determination is issued based on available evidence must be reasonable. Generally, if the information is being requested in writing by mail, this would be the number of days normally allotted by a state UI agency for deadlines for other activities by mail, e.g., 5 days, 7 days, or 10 days.

Late Responses

States are strongly encouraged to use any relevant information, including an untimely response by a party if untimely information is permitted to be considered under state law, in order to make a quality determination.

Undelivered/Returned Mail

A Notice or request for information that was mailed to the address of record for any party and returned by the U.S. Postal Service as undeliverable will be considered a reasonable attempt to obtain information.

ELEMENT 17 - CLAIMANT INFORMATION

The claimant must be given the opportunity to be heard and to present information on any potentially disqualifying issue or conflicting material facts from the employer or another party.

Enter **A (Adequate)** if:
15 points

- (a) all of the relevant and critical claimant information (the material facts) was obtained and documented in the written record; or
- (b) some or all of the relevant and critical claimant information is missing, but the documentation establishes that the attempts to obtain the information met the criteria previously defined as reasonable.

Enter **I (Inadequate)** if:
10 points

some of the relevant and critical claimant information is missing and there is no documentation to establish that the adjudicator met the reasonable attempt criteria to obtain the information.

Enter **N (Not Obtained)** if:
0 points

- (a) none of the relevant and critical claimant information was obtained, and there is no documentation to indicate that the adjudicator met the reasonable attempt criteria to obtain it; or

- (b) element 7 is "N" and element 8 is *other than* "00" or "01".

ELEMENT 18 - EMPLOYER INFORMATION

Employer information is essential on eligible voluntary quit, discharge, refusal-of-work, and certain deductible income cases. Also, the employer must be given the opportunity to be heard and to refute information which could be adverse to the interests of the business. The evaluation of the employer information must include witness statements from individuals who are employed by the employer, paystubs that are issued by the employer, and any other documents that were issued by the employer.

Employer information is not necessary for a voluntary quit if: (a) the claimant gives clearly disqualifying information, (b) state law does not provide for a more severe penalty for certain types of discharge, and (c) the time period allowed for an employer to respond to the notice of initial claim has expired.

Enter "**A**" (**Adequate**) if:
15 points

- (a) all of the relevant and critical employer information (the material facts) was obtained and documented in the written record; or
- (b) some or all of the relevant and critical employer information is missing, but the documentation establishes that the attempts to obtain the information met the reasonable attempt(s) criteria.

Enter "**I**" (**Inadequate**) if:
10 points

some relevant and critical employer information is missing and there is no documentation to establish that the adjudicator met the reasonable attempt criteria to obtain the information.

Enter "**N**" (**Not Obtained**) if:
0 points

- (a) none of the relevant and critical employer information was obtained, and there is no documentation to indicate that the adjudicator met the reasonable attempts criteria to obtain it; or
- (b) element 7 is "N" and element 8 is other than "00" or "01".

Enter "X" (not applicable) if:

15 points

such information was neither relevant and critical nor applicable.

ELEMENT19 - INFORMATION (FACTS) FROM OTHERS

Often it is necessary to get relevant information from parties other than the claimant or the employer. "Others" include, but are not limited to, physicians, union officials, school officials, public transportation officials, licensing agencies and other governmental agencies such as Welfare, Workers' Compensation, Employment Service (ES), and the United States Citizenship and Immigration Services (USCIS). "Others" also may include witness statements (see exception under Element 18 – Employer Information), and labor market information; for example, documents such as screen print outs generated from within the state UI agency.

Enter "A" (Adequate) if:

15 points

- (a) all relevant and critical information (facts) from others (the material facts) was obtained and documented in the written record; or
- (b) some or all relevant and critical information from others is missing, but the documentation establishes that the attempts to obtain the information met the criteria previously defined as reasonable.

Enter "I" (Inadequate) if:

10 points

some of the relevant and critical information from others is missing and the documentation does not establish that the attempts to obtain the information met the criteria previously defined as reasonable.

Enter "N" (Not Obtained) if:

0 points

- (a) none of the relevant and critical information from others was obtained and there is no documentation to indicate that the adjudicator made reasonable attempts to obtain it; or

- (b) element 7 is "N" and element 8 is other than "00" or "01."

Enter "X" (not applicable) if:
15 points

such information was neither relevant and critical nor applicable.



HINT: Relevant information may include, but is not limited to, labor market information and local commuting patterns. Whatever labor market information is used in reaching a conclusion must be referenced in the adjudicator's reasoning.

ELEMENT 20 - LAW AND POLICY CORRECTLY APPLIED

The adjudicator must apply state law and policy pertaining to UI eligibility to the material facts obtained and documented in the case file. Law and policy establish whether, for example, a discharge was or was not for misconduct or whether a voluntary quit was or was not with good cause.

Enter "M" (Meets) if:
45 points

all relevant and critical facts were obtained or a reasonable attempt was made to obtain them and the nonmonetary determination is clearly correct

Enter "Q" (Questionable) if:
30 points

some of the relevant and critical facts were not obtained. In the absence of those facts, correct (or incorrect) application of law and policy cannot be established.

Enter "W" (Does Not Meet) if:
0 points

- (a) all relevant and critical facts were obtained or a reasonable attempt was made to obtain them and the nonmonetary determination is clearly **incorrect**.
- (b) element 7 is "N" and element 8 is other than "00"

or "01."



HINT: If there are any reductions in elements numbered 17, 18, or 19, "Q" (Questionable) is the only entry that can be made for Element No. 23.

Conversely, if elements 17, 18, and 19 are all scored "A" (Adequate) or "X" (Not Applicable), Element No. 20 cannot be entered as Q (Questionable) but must be entered as either "M" (Meets) or "W" (Wrong-Does Not Meet).

ELEMENT 21 - THE WRITTEN DETERMINATION

The written determination communicates the state UI agency's determination to allow or deny UI benefits as a result of its fact-finding investigation. Federal requirements mandate the issuance of a written determination notice to the claimant when benefits are denied (see Part V, par. 6013 of the ES Manual). State law and policy define interested parties who must be issued a written determination. To allow the adversely affected party to decide whether or not to appeal the determination it must include: (1) a summary statement of the material facts (the determining fact(s) on which the determination is based), (2) the reason(s) for allowing or denying benefits, and (3) the conclusion or legal result of the decision.

In order for the written determination to be scored as "Adequate," it must cite the section of law upon which the case is based. It is not necessary to include the actual text or explanation of the law, but the citation of the law must be specific and must direct the party to the exact applicable section of law. It is sufficient if the text or explanation of the law is contained in a pamphlet or other publication issued to the party.

The Claim Determinations Standard (20 CFR part 602, Appendix A) and the ES Manual (Part V, Sections 6010-6015) require that the claimant be given information with respect to his/her appeal rights. It follows that the same appeals information must be provided to an employer who is deemed an interested party to the determination.

1. The following information must be included in the notice of determination to the interested parties:
 - (a) that they have the right to appeal, or if the state law requires or permits a protest or redetermination before an appeal, that they may protest, or request a redetermination; and
 - (b) the period within which the appeal, protest, or request for

redetermination must be filed.

2. The following information must be included either in the notice of determination or in separate informational material (e.g., a booklet, a pamphlet, the state UI agency's Web site, etc.) referred to in the notice:
 - (a) the manner in which the appeal, protest or request for a redetermination must be filed, by mail, by fax, in-person, etc., and the place(s) where the appeal, protest, or request for redetermination can be mailed, faxed, filed/delivered in-hand, etc.;
 - (b) any circumstances which will extend the appeal, protest, or redetermination period (such as non-workdays, good cause, etc.) beyond the date stated in the notice of determination; and,
 - (c) where the party can obtain additional information and assistance about filing an appeal, protest, or request for redetermination.

Appropriate law and policy references cited in the formal written determination must be based on the facts contained in the fact-finding records. This information must be provided to the parties when a formal written determination is issued. When a written determination notice is not required (thus, only informal determination is issued; see "Hint" immediately below), the case documentation must cite the material facts, the rationale for the determination, and the conclusion or legal result of the decision. The written determination is not automatically scored down because Claimant Information, Employer Information, and/or Information from Others are scored down.



HINT: *An informal determination is one that is not required to be formally written and provided to the interested party(ies). Not all states have informal determinations in their law and policy. An example of an informal determination is a determination of eligibility to a claimant on an "Able and Available" (A&A) issue (including active search for work) where there is no employer as interested party; as it is payable, no appeal rights are applicable. With the exception of the appeal rights requirements, an informal determination must include the same information as a formal written determination.*

Enter "A" (Adequate) if:
10 points

- (a) the written determination presents:

(1) a summary statement of the documented material facts upon which the determination is based;

(2) the reasoning for allowing or denying benefits (or for accepting one set of facts over another, i.e., a credibility finding);

(3) the conclusion of law and the legal result, including the relevant legal citation(s); and,

(4) the required appeal information.

(b) a written notice of determination is not required (an informal determination), and the case file has an adequate summary statement of the material facts and the reasoning for the determination is adequate to demonstrate that law and policy were correctly applied.

Enter "I" (**Inadequate**) if:
5 points

- (a) the summary statement of material facts and reasons for allowing or denying benefits does not show clearly why benefits are allowed or denied; or
- (b) all of the fact-finding is simply transferred to the written determination rather than just the material facts pertinent to the issue; or
- (c) the adjudicator's reasoning statement is incomplete, thus not supporting the outcome; or
- (d) the written notice contains significant grammatical errors and/or misspelled words; or
- (e) the written notice contains relatively minor errors in content, but not so significant as to affect payment of benefits, or
- (f) a written determination issued to the employer misstates chargeability; or

- (g) the required appeal information is not sufficient; if the employer is not entitled to appeal rights but the summary statement is sent to the employer; or if the written determination incorrectly states the employer does not have appeal rights; or
- (h) a written notice of determination is not required (an informal determination), and the case file has an incomplete summary statement of the material facts found and/or the reasoning for the determination is incomplete to demonstrate that law and policy were correctly applied; or
- (i) the written determination does not contain a citation of law or the appropriate section of law pertaining to the issue adjudicated.

Enter "**W**" (**Completely Wrong**) if:
0 points

- (a) the determination clearly conflicts with state law and policy; or
- (b) the material facts cited in the written determination are not supported by the case documentation or the facts are distorted and/or confusing; or
- (c) a written determination was not issued to the claimant or employer when required; or
- (d) the required appeal information is missing; or
- (e) a written notice of determination is not required (an informal determination), and the case file lacks a summary statement of the material facts found and/or lacks the reasoning for the determination to demonstrate that law and policy were correctly applied; or
- (f) the written notice contains errors in content, significant enough as to affect payment of benefits; or
- (g) element 7 is "N" and element 8 is other than "00" or "01".



HINT: If “W” (Completely Wrong) is entered for Written Determination, the entry for Element 20 (Law and Policy):

- Cannot be “M” (Meets)
- Must be “W” (Wrong-Does Not Meet) if entries for Elements 17-19 are “A”(Adequate) or “X”(Not Applicable) or
- Must be “Q”(Questionable) if entries for Elements 17-19 are other than “A”(Adequate) or “X”(Not Applicable)



HINT: Aside from evaluating the quality of the appeal rights, Element 21 evaluates the clarity and accuracy of the information (the decision) being communicated. The written determination must furnish the interested parties with sufficient information to enable them to understand the determination. The absence, inaccuracy, or distortion of this information must be reflected in the score for Element 21, under the various scoring categories, by selecting “I” for Inadequate or “W” for Completely Wrong.

THE COMMENTS SECTION

Comments are required to be recorded on the hard copy of the DCI for use in discussion during the tripartite reviews. Additionally, the electronic DCI, in the UI Required Reports database, contains a comments section which allows the state to provide the evaluator’s explanation of why an element did not conform to the data validation criteria and/or was scored down for any of the quality scoring elements. The DCI must identify the element number to which the comments apply and recorded comments must be entered in the UI Required Reports database at the conclusion of the quality review.

As the specific comments made by the reviewer are the only explanation for why a case was scored down or was wrong in any of the data validation criteria, it is essential that the Comments section be properly utilized. Otherwise, it is impossible to determine with any accuracy why a case failed. For example, “Employer information inadequate because final incident not established and no rebuttal to claimant’s statement offered.”

CHAPTER VI

GUIDE SHEETS

GUIDE SHEET 1

VOLUNTARY QUIT

GUIDE SHEET 1 – VOLUNTARY QUIT

Voluntarily leaving work without good cause is reason for disqualification. In some states, good cause may be established only when the reason for leaving is work-related. In other states, good cause may be established if the leaving was for either personal or work-related reasons.

Many state laws, regulations or policies dictate that certain situations require a specific result. The following is a list of possible statutory provisions:

- Voluntarily leaving for domestic or marital reasons;
- Voluntarily leaving to join or accompany a spouse or companion;
- Voluntarily leaving to accept other work;
- Voluntarily leaving to go to school;
- Voluntarily leaving to enter self-employment;
- Voluntarily leaving due to retirement; and
- Failure to pay union dues or refusal to join a bona fide labor organization when membership was a condition of employment.

This list is by no means comprehensive, but it does illustrate the various conditions associated with the issue of employee-initiated separations. If the reviewer determines, after a thorough examination of the reason for leaving, that a situation is statutory, investigation of other basic factors by the adjudicator may not be necessary. In other words, by statute, certain circumstances for voluntarily quitting always lead to a decision of eligibility or always lead to a decision of denial. Each state has different “statutory” provisions which dictate the outcome of the adjudication.

In addition, specific circumstances of the case may dictate the outcome. For example, according to state law and policy (or regulation, controlling appeals precedent, etc.), a leave of absence (LOA) might be adjudicated under potentially disqualifying voluntary quit provisions, if the claimant is determined to have initiated the work separation. Conversely, a reviewer might encounter a state law and policy that dictates that an employer’s refusal to allow a claimant to return to work after being on a LOA, would in fact be adjudicated under that state’s misconduct provisions (See Guide Sheet #2).

The investigation of situations where the claimant filed a claim for benefits while on LOA status (which was initiated by the claimant), appropriately constitutes a voluntary quit and it must be adjudicated accordingly, and an employer’s refusal to allow a claimant to return to work should appropriately be adjudicated as a discharge. While state adjudication practices may vary, for BTQ evaluation purposes, the absence of state law and policy (or regulation, controlling appeals precedent, etc.) that supports an adjudication practice that differs, may impact the score outcome.

Some states might consider a claimant on a LOA as still job-attached (whether

GUIDE SHEET 1 – VOLUNTARY QUIT

paid or unpaid), and therefore “not unemployed;” in this scenario, the case would properly be adjudicated under the state’s “Unemployment Status” provisions (See Guide Sheet #13 for additional information on Unemployment Status.)

Reviewers will carefully consider these circumstances when reviewing cases, especially in the absence of a specific state law or policy.

Perfunctory or automatic outcomes are not statutory if the adjudicator needs additional information, other than the reason for leaving, to make a decision. For example, some states provide that it is good cause to leave work if the claimant is physically unable to perform the work. Generally good cause is not established unless the claimant pursued alternatives before leaving, e.g., LOA, or transfer to a job with less strenuous physical requirements.

If the adjudicator must investigate the claimant’s pursuit of alternatives before leaving, this situation is not statutory, i.e., it does not always require a specific result. Therefore, the adjudicator must determine whether or not the claimant’s reason for leaving was, in fact, voluntary and without good cause. If complete claimant fact finding establishes a voluntary quit without good cause connected with the work, the adjudicator need not obtain employer information. However, the adjudicator must attempt to obtain employer information if either a voluntary quit determination is made to pay benefits, or if the state UI agency has a more severe penalty for misconduct. Employer information is needed if the state UI agency has a more severe penalty for misconduct to ensure that the claimant does not manipulate the disqualification provisions by misrepresenting the reason for work separation and obtain an inappropriately shorter period of disqualification.

The fact-finding process is governed by the type of separation issue involved. Relevant questioning is developed to gather the facts surrounding the claimant’s reason(s) for leaving work.

The information below is provided as guidance to establish the nature of the separation and whether or not good cause can be established. Voluntary leaving cases require the adjudicator to investigate several factors, such as:

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHY DID THE CLAIMANT QUIT?

It is necessary to pinpoint why the claimant left work on that particular day. Often the claimant will cite a “laundry list” of grievances, and this may be helpful in establishing the primary reason for the claimant initiating separation from employment. However, an adequate investigation of this factor always requires the adjudicator to pinpoint the primary reason for

GUIDE SHEET 1 – VOLUNTARY QUIT

separation.

It is also necessary to examine the adverse effect of the situation on the claimant. Was the reason for leaving compelling? Would a reasonably prudent person in a similar situation have left work? How severe or immediate were the harmful circumstances? If it is clear there was little adverse effect involved in staying with the job, e.g., “the job was boring,” the adjudicator need not investigate basic factors “B,” “What were the Conditions of Work?” and “C,” “What Did The Claimant Do To Remedy The Situation Before Leaving?”

Was the reason for leaving personal or work-related? In states where the reason for leaving must be related to the work to be considered good cause, and the claimant left for personal reasons thorough fact-finding established that, the adjudicator need not investigate Basic Factors “B” and “C,” as benefits will automatically be denied.

B. WHAT WERE THE CONDITIONS OF WORK?

If the reason(s) for leaving was work-related, conditions of work must be examined. What were the claimant’s duties? Rate of pay? Hours of work? Commuting distance/time? What did the employee expect from the employer? Were these expectations met? If not, details must be obtained. Unacceptable conditions of work may be a result of a breach in the employee/employer contract or hiring agreement, or due to substandard work conditions.

The agreement may be verbal or written, a matter of union contract, or a specific health or safety regulation peculiar to a specific industry or job. The working conditions may also be unacceptable due to a violation of commonly accepted employment practices such as equal treatment or fair distribution of work assignments.

C. WHAT DID THE CLAIMANT DO TO REMEDY THE SITUATION BEFORE LEAVING?

To establish good cause, many states’ laws require that the claimant must pursue all reasonable alternatives before leaving. Did the claimant ask for a transfer, or a leave of absence, or pursue established grievance procedures? Did the claimant give the job a fair trial? If alternatives were not pursued, why not? Did the claimant believe that such action would be futile?

Even if the work had a serious adverse effect on the claimant, good cause

GUIDE SHEET 1 – VOLUNTARY QUIT

is not established unless reasonable alternatives were pursued. Even if working conditions are determined unsuitable, the claimant must have attempted to resolve the problem before leaving unless it can be conclusively established that such an attempt would have been futile.



HINT: *If the state requires that the reason for leaving must be connected to the work to show good cause, and thorough fact-finding establishes the claimant left for purely personal reasons, investigation of Basic Factors “B” and “C” is not required.*

If the claimant gives clearly disqualifying information, and state law does not provide for a more severe penalty for certain types of discharge, and the time period allowed for an employer to respond to the Notice has expired, then the employer need not be contacted.

If the adjudicator fails to pinpoint the reason the claimant left work, enter “1” for Element 20 (Claimant Information).

If the claimant quit because of working conditions, the employer must be contacted.

It is not necessary to investigate the claimant’s pursuit of alternatives before leaving if the claimant clearly was not suffering adverse effects. In other words, if the reason for leaving is not sufficiently compelling and would never constitute good cause (claimant was bored with the job), the claimant’s pursuit of alternatives will not affect the determination; therefore investigation in this area is not necessary.

GUIDE SHEET 2

DISCHARGE

GUIDE SHEET 2 – DISCHARGE

Discharge from a job for misconduct connected with the work is cause for disqualification. Misconduct may be defined as a willful, or controllable breach of, responsibilities, or behavior that the employer has a right to expect of its employees. Stated another way, the misconduct may be an act or an omission that is deliberately or substantially negligent, which adversely affects the employer's legitimate business interests. Simple negligence with no harmful intent is not misconduct, nor is inefficiency, unsatisfactory conduct beyond the claimant's control, or good-faith errors of judgment or discretion.

EMPLOYER INFORMATION MUST BE OBTAINED, OR A REASONABLE ATTEMPT MUST BE MADE TO OBTAIN IT, FOR EACH DISCHARGE DETERMINATION.

In addition to the Basic Questions and Factors to Consider listed below, a reviewer will sometimes encounter circumstances that must be considered in a slightly different light than the typical discharge for misconduct case. For example, in a situation where the claimant, having been on a suspension or LOA, tries to return to work and is not allowed to by the employer, this would be considered typically as an employer-initiated work separation, and therefore would be properly adjudicated under the state's misconduct provisions.

However, if a claimant, while on a LOA or suspension, never attempts to return to work, this would typically be considered as a claimant-initiated work separation, and therefore would be adjudicated under the state's Voluntary Quit provisions (see Guide Sheet 1 for additional information on Voluntary Quits).

However, a state's law and policy, which might require a specific outcome other than that listed above, must be considered when scoring these types of cases.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHY WAS THE CLAIMANT DISCHARGED?

It is necessary to establish as clearly as possible why the employer decided to discharge the claimant on that particular day. Often the employer will cite a "laundry list" of incidents which may have occurred over a period of time. An adequate investigation of this factor requires the adjudicator to pinpoint the incident(s) which led to the discharge. (Prior related incidents of unacceptable behavior are investigated below under "C" and "D" to establish the willfulness of the act.)

The behavior must have had a direct adverse effect on the employer's business interests. Incidents which occur away from the work site and have no direct effect on the employer are generally not misconduct.

GUIDE SHEET 2 – DISCHARGE

The discharge must be reasonably proximate in time to the act causing the separation. Misconduct is not established if a substantial time period has lapsed between the act, or when the employer was aware of the act, and the separation, unless the passage of time was required for completion of administrative procedures.

If the adjudicator failed to pinpoint the reason for the discharge, enter “I” (Inadequate) for Element No. 21, Employer Information.

B. WHAT WERE THE CONDITIONS OF WORK?

In “A” above, the adjudicator must pinpoint what the claimant did. Here the adjudicator must discover what the claimant should have done. The expected behavior may be outlined specifically in a verbal or written employer rule or union agreement; practices or conduct peculiar to a particular industry or job; a law or regulation which governs health or safety practices; or may be covered by commonly accepted standard employment practices.

The adjudicator must determine the specific job duties of the claimant. Often employers and claimants will give a job title which is generic and does not describe the claimants’ everyday duties. For example, the claimant may say that his/her job was grocery stock clerk. While this sounds specific, the adjudicator must explore exactly what the employer expected of the claimant.

C. WHAT DID THE EMPLOYER DO TO MAINTAIN THE EMPLOYER / EMPLOYEE RELATIONSHIP?

This factor focuses on how an employer tried to control or prevent the behavior that resulted in the discharge. This information is necessary to establish both the reasonableness of the employer’s action and the claimant’s knowledge of the result of the conduct. Gross misconduct or serious violations of common rules of employment (drunkenness, unprovoked insubordination, stealing from the employer, etc.) need not be preceded by employer control, prevention, or warnings to constitute misconduct.

During the disciplinary process the consequences of repeating an act can be implied in warnings from the employer and it is not necessary for the employer to tell the claimant the consequences of the repeated act. If the claimant denies that warnings were given, the name of the person(s) who issued the warning(s), the number of warnings, the specific behavior leading to each warning, dates of warnings and the method used must be

GUIDE SHEET 2 – DISCHARGE

documented. If the employer condoned the behavior in the past, this too must be documented. The employer's actions in similar situations involving other employees may need to be investigated as well.

D. WHAT DID THE EMPLOYEE DO TO MAINTAIN THE EMPLOYEE/EMPLOYER RELATIONSHIP?

This factor focuses on the degree to which the claimant may have been able to prevent or control the events that resulted in the discharge. Control refers to the individual's knowledge of the required behavior and the ability to reasonably foresee and take corrective action. Is there any question of whether or not the claimant was aware of the conditions of work?

If the employee was warned about a specific behavior, what did the employee do to modify his/her behavior to remain employed? Were there uncontrollable circumstances that caused the claimant to "fail"? Or, knowing that the employer was unhappy with past performance, did the employee persist in the unacceptable behavior? What specific efforts did the claimant make to alleviate the situation?

If, after thorough fact-finding about the reason for the discharge, it has been established that any of the following situations exist, further fact-finding is not required:

- Information or evidence from both parties leads to the conclusion that there is no misconduct (e.g., inefficiency or inability to do the work despite a good faith effort), or
- there was no adverse effect on the employer (e.g., difference in personalities), or
- the behavior was not work connected or was not proximate to the discharge, or
- gross misconduct is established (e.g., theft).

An investigation of actions the employer took to maintain the employer/employee relationship is necessary unless one or more of the conditions described above existed. If there is disagreement between the claimant and the employer about warnings given or condonation of the claimant's actions, information must be obtained from both parties. The employer must be asked to furnish specific information about the time, place, method, and content of the warning(s). If the specifics are missing when needed, enter "I" for Element 21, Employer Information.

GUIDE SHEET 2 – DISCHARGE

If the employer alleges that a rule, agreement, law, or regulation was broken and the claimant denies the allegation, the documentation must include specific information about the particular condition that was breached.

If the claimant repeated an offense after being warned, documentation must show that the claimant was given an opportunity to explain any extenuating circumstances which might have justified the act. Merely repeating an offense after being warned does not automatically establish misconduct. If the fact-finding does not show why the claimant repeated the offense, enter “1” for Element 20, Claimant Information.

GUIDE SHEET 3

ABLE AND AVAILABLE

GUIDE SHEET 3 – ABLE AND AVAILABLE

Federal law, in Section 303(a)(12) of the Social Security Act (SSA), requires that state law include the requirement that unemployment compensation (UC) is payable only to individuals who are able and available to work and are actively seeking work (A&A) for the week for which UC is claimed. Some states include the work search requirement in their A&A statute, and others have a separate statutory provision for work search. Be certain the issue is correctly identified with respect to state law.

Whether an individual is able to work, available to work, and actively seeking work must be tested by determining whether the individual is offering services for which a labor market exists. This requirement does not mean that job vacancies must exist, only that, at a minimum, the type of services the individual is able and available to perform is generally performed in the labor market. The state must determine the geographical scope of the labor market for an individual under its UC law.

According to Part 604 of the Code of Federal Regulations, states may consider an individual A&A as long as any limitation on his or her ability or availability to work does not constitute a withdrawal from the labor market.

For example, a reviewer might encounter cases where a claimant indicates an alternative work schedule, such as telecommuting, or a claimant might have relocated to a new area. In these cases, a claimant must still demonstrate that s/he is A&A consistent with current labor market conditions based on his/her skills and abilities. A change in a claimant's labor market can result in a requirement to expand his/her work search to other occupations for which s/he is qualified.

A common A&A issue is "approved training." All states must include in their laws a provision for approved training. Section 3304(a)(8) of the Federal Unemployment Tax Act (FUTA) requires that compensation shall not be denied to an individual for any week because the claimant is in training with the approval of the state UI agency or because of the application, to any such week in training, of state law provisions related to availability for work, active search for work, or refusal to accept work. Each state will define what constitutes approved training and waive the requirements for seeking work, refusing work, or referral to work and other eligibility requirements. Approved training may be reported as code 40, Work Search, or code 30, Able/Available. Do not score the case as an incorrect issue in Element 7, "Correct Issue Code?", if an approved training issue is reported as an A&A issue, even if the state has a separate law provision for work search requirements.

However, if the individual fails to attend or otherwise participate in the training, the state must determine whether the reason for nonattendance or non-participation indicates that the individual is not A&A to work.

GUIDE SHEET 3 – ABLE AND AVAILABLE

The state UI agency must obtain information from the claimant and (if necessary) the training facility or learning institution to assist in making a determination. The inquiry made of the claimant must include the type of training being pursued, its duration, and the prospects of the claimant obtaining a job which is suited to the training. The state UI agency must also secure a description of the training curriculum and evidence that the training facility is approved by the state's accrediting or certifying agency, e.g., a State Board of Education or a State Board of Vocational Training.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT ARE THE CLAIMANT'S CIRCUMSTANCES?

This factor gives the initial picture of the claimant. Is the claimant qualified by experience, training, licenses, or possession of tools, to do the type of work he/she is seeking? Is the claimant physically or mentally able to work? If the claimant is an alien, has his/her legal authorization to work in the U.S. expired? Is the claimant's availability restricted in any way? Claimants must arrange their personal circumstances so that they can immediately accept suitable work. For example, failure to have adequate transportation or child care arrangements unduly restricts availability for work.

Self-imposed restrictions such as an unreasonable minimum acceptable rate of pay, an unwillingness to work all hours customary for an occupation, or an unwillingness to commute within the customary geographical labor market area may substantially reduce employment opportunities. A temporary removal from the labor market due to incarceration, vacations, or school attendance may also adversely impact availability.



HINT: *An investigation is necessary only for factors that raise potentially disqualifying issues. It is not necessary to investigate the claimant's ability to work or the claimant's qualifications unless some information in the record raises an issue.*

B. IS THE CLAIMANT WILLING TO WORK?

Claimants who have controllable restrictions which adversely affect availability for work according to state law and policy must be given the opportunity to alter their demands. Documentation must show that the adjudicator explained the requirements of the law and if necessary, supplied labor market information to the claimant. In the absence of case documentation, the requirements of the law may be communicated by an

GUIDE SHEET 3 – ABLE AND AVAILABLE

alternative method, e.g., a booklet, a pamphlet, the state workforce agency's website, etc. The claimant's willingness to adjust his or her reemployment demands demonstrates an interest in returning to work. This may include altering demands or job search methods and making arrangements to resolve personal hurdles such as transportation or child care.

Examination of specific work search contacts, the claimant's registration with the Employment Service through the local One-Stop Career Center, and actions the claimant has taken on referrals are all pertinent to the claimant's willingness to work.

A claimant who is in an approved training program is exempt from work search requirements; therefore, it is necessary to determine whether the training is approved by the state UI agency.

State UI agencies generally have lists of state-approved training facilities, and claimants' attendance is generally not an issue; therefore, a countable (for BTQ review purposes) nonmonetary determination does not exist. However, if the claimant fails to attend or otherwise participate in the training, a countable nonmonetary determination may exist (see page VI-11 for more information on counting A&A nonmonetary determinations relating to school attendance).

There are occasions, however, when the state UI agency must ask the appropriate certifying board in the state whether that the facility meets the state's requirements as an accredited institution. In the absence of accreditation, it must be determined whether the training facility complies with state UI agency requirements for curriculum quality and supervision of trainees. In those states that have an active search for work requirement, the claimant's efforts to seek work must be documented. Documented efforts to seek work could either lend credibility or cast doubt on the claimant's statements. If the work search is not pursued and documented, score Element 17, Claimant Information (I) inadequate and Law and Policy, Element 20, Questionable (Q), if the decision was made without these necessary facts.

If restrictions are uncontrollable (incarceration, hospitalization, etc.) and are clearly disqualifying, the adjudicator should not be penalized for not investigating further. If restrictions are controllable (transportation, childcare, etc.), willingness to work must be investigated; efforts to seek work and willingness to alter restrictions or remove barriers are particularly important and must be documented. When the claimant agrees to alter restrictions and reinstatement for eligibility is considered, efforts to seek work under the altered conditions are particularly important.

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C. HOW DO THE CLAIMANT'S REEMPLOYMENT EXPECTATIONS COMPARE TO THE PICTURE OF THE LABOR MARKET?

The claimant's circumstances must be examined in light of labor market conditions. What employment opportunities can the claimant expect given his/her particular circumstances? Is the claimant on a temporary or seasonal layoff? If the claimant's circumstances unduly reduce employment opportunities, the claimant may not be considered available to work. As stated above, a state may consider an individual eligible for benefits, provided any limitation on his or her ability or availability to work does not constitute a withdrawal from the labor market. Specifics of the labor market such as the prevailing rate of pay for the occupation, customary shifts and hours, commuting patterns for the area, and availability of job opportunities in the claimant's customary occupation are all considerations.

In approved training issues, the state UI agency must determine whether training will help the claimant find reemployment. It must be established, based on the claimant's work history, if the training will facilitate his/her return to employment in an occupation where there is a recurring demand. The claimant's work history and other skills or educational background must be reviewed if the training being pursued is appropriate within the training policy guidelines established by the state UI agency.

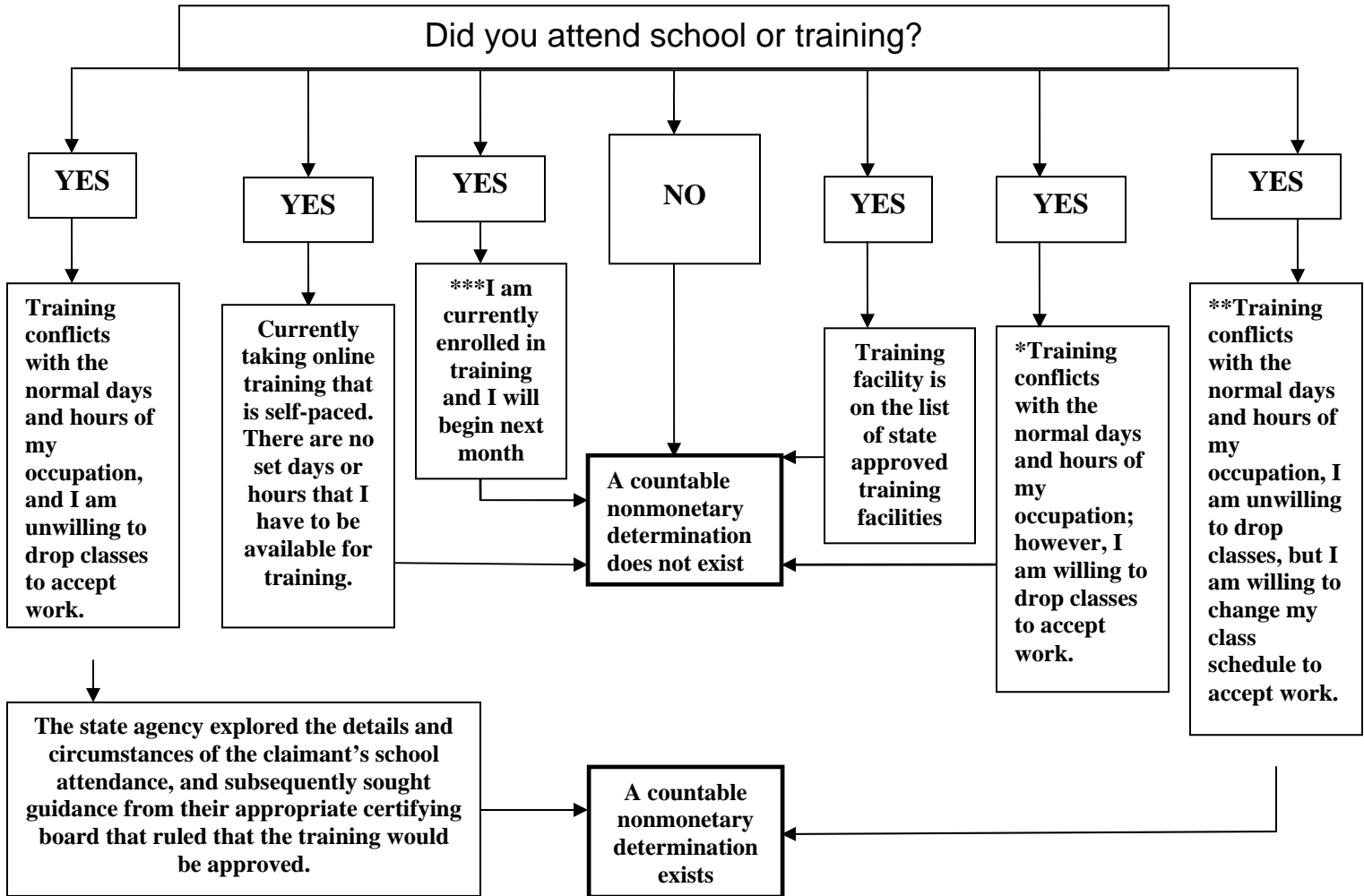
The claimant's employment background and current labor market conditions for employment in the claimant's occupation must be explored to determine whether:

- The claimant's occupational skill is obsolete or is in limited demand because of a declining industry, and/or
- The individual has some transferable skills and the additional short-term training would make reemployment more likely.



HINT: *It is essential for the adjudicator to examine the facts of each case in order to determine whether or not labor market information should be considered, since the circumstances of the case will dictate the need for labor market information.*

GUIDE SHEET 3 – ABLE AND AVAILABLE



*In most states, a claimant's declaration that they are willing to drop classes removes any possibility that the claimant will be denied benefits (in relation to their school attendance/able and available issue), since they are essentially willing and able to accept work if work is offered to them. However, in other states a claimant's willingness to drop classes if work is offered does not negate the potential to deny benefits, because other factors are considered in determining whether to render a decision to pay or deny benefits. Therefore, a countable nonmonetary determination would exist in states that consider other factors outside of a claimant's willingness to drop classes, since there still remains the potential to deny.

**In most instances, a claimant's declaration that they are willing to change classes would not automatically remove the potential to deny benefits. A state would need to examine the probability of this occurring based on the circumstances. For example, has the deadline expired for students to change their class schedule?

***A claimant's declaration that he/she will begin attending school at a future point and time does not pose a potential to deny benefits until the claimant certifies for benefits for a week that he/she is actually attending school. Potential or future issues must be

GUIDE SHEET 3 – ABLE AND AVAILABLE

flagged and investigated during the week in which they are presumed to occur. The issuance of a nonmonetary determination on a future issue is not countable.

GUIDE SHEET 4

REFUSAL OF WORK

GUIDE SHEET 4 – REFUSAL OF WORK

All state laws address refusals of work. Refusal of suitable work or referral, or failure to apply with an employer after accepting referral, without good cause, is reason for disqualification. There are three criteria that must be met before a disqualification is imposed:

- (1) Was there a bona fide offer of work or referral to work?
- (2) Was the work suitable?
- (3) Was there good cause for the refusal?



HINT: *If the adjudicator cannot establish that there was a bona fide offer or referral to a job, there is no need to investigate further, as no issue existed, and no disqualification may be imposed.*

Job referrals from ES (or related agency) are automatically considered bona fide, since the agency may accept only legitimate job offers from employers; offers must meet ES requirements before initiating claimant referrals.

Generally, a hierarchy exists with the investigation of refusal of suitable work or referral issues. The adjudicator first must establish that there is a bona fide offer of work or referral to work; the adjudicator must second examine the suitability of the offer or referral; and (if the offer or referral is suitable), the adjudicator third must determine whether the claimant had good cause for refusing the suitable work.

To determine the suitability of the work or referral to work, the working conditions are compared to these provisions contained in Section 3304 (a)(5) of the Federal Unemployment Tax Act (FUTA): Federal/state labor standards (whether the position is vacant due to a strike, lockout, or other labor dispute; whether the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or whether as a condition of being employed the individual would be required to join a company union, or to resign from or refrain from joining any bona fide labor organization); and the claimant's experience and/or training.

The adjudicator must take the initiative in determining the suitability of offered work or referral to work. The investigation must not be restricted to objections regarding the offered work/referral to work raised by the claimant.

GUIDE SHEET 4 – REFUSAL OF WORK



HINT: If the adjudicator determines that the work was unsuitable, a refusal is not disqualifying and no further investigation is needed. Either a formal or an informal nonmonetary determination must be completed and reported. If the work was suitable, further investigation is required to determine whether the claimant has good cause for refusal.

All state laws exempt claimants from the refusal of work provisions of their laws when claimants are enrolled in training programs approved by the state while receiving benefits. (Section 3304(a)(8), FUTA)

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WAS THERE A BONA FIDE OFFER OF WORK OR REFERRAL TO WORK?

The investigation of this factor covers two areas: (1) whether there is a genuine offer of work and (2) if the offer was successfully conveyed to the claimant. The offer of work must be for a specific job. The details of the job, i.e., duties, starting pay, hours of work, etc., must be documented. Ideally, the details of the offered work must have been conveyed to the claimant. However, if the claimant prevents the employer or the state UI agency representative from relaying the details by refusing the job or the referral at the beginning of the interview, the offer is still considered bona fide. It is necessary to be sure that the claimant understood that an offer or referral was being made.



HINT: If it is determined that there was no bona fide offer of work, it is not necessary to conduct further fact-finding; no issue exists.

B. WAS THE JOB SUITABLE?

Many state laws determine suitability of work based on:

- (1) The degree of risk to a worker's health, safety, and morals; the worker's skills, physical fitness, prior training, experience, capabilities, and earnings; the length of unemployment and prospects for securing local work in a customary occupation; and the distance of the available work from the worker's residence; and

GUIDE SHEET 4 – REFUSAL OF WORK

- (2) Federal/state standards that make the work unsuitable if:
- (a) the wages, hours, or other conditions of the work offered are substantially less favorable than those prevailing for similar work in the locality; or
 - (b) the position offered is vacant due directly to a strike, lockout, or other labor dispute; or
 - (c) If, as a condition of being employed, the individual would be required to join, to resign from, or refrain from joining a company union or any bona fide labor organization. (The latter two factors must be documented only if relevant to the issue.)

It must always be clear that the job met Federal/state standards in that the working conditions were not substantially less favorable than those prevailing for similar work in the labor market.

Labor market conditions *must* be taken into consideration when determining the suitability of any work offered (e.g., claimant's prospects of work, the number of jobs available in the claimant's chosen occupation or skills area, the number of people unemployed in that occupation or skill area, and the length of time the claimant has been unemployed).

If it is determined that the job was not suitable, it is not necessary to investigate this issue further, as claimants are never required to accept unsuitable work. Either a formal or an informal nonmonetary determination must be completed and reported. However, refusal of non-suitable work may trigger an investigation to determine whether the claimant met the able/available/actively seeking work requirements. For example, if the claimant refused the offer of work due to illness, this would raise a question of availability.



HINT: *If the state would never penalize a claimant for refusing work because of illness or other personal circumstances not related to the suitability of the work and the claimant made every effort to remove the restriction(s), then the adjudicator need not examine the suitability of the work.*

C. DID THE CLAIMANT HAVE GOOD CAUSE TO REFUSE SUITABLE WORK OR REFERRAL TO SUITABLE WORK?

GUIDE SHEET 4 – REFUSAL OF WORK

If the job offered or job referral was suitable, the claimant's objections must be examined for good cause for refusing the offer. Personal reasons for refusing suitable work may include illness, hospitalization, vacation, forgetting to report for the interview, or lack of child care or transportation. Often these personal circumstances were within the claimant's control (e.g., lack of transportation, lack of child care, or lack of tools). In order to establish good cause, the claimant must have made every reasonable attempt to remove the restrictions pertaining to the refusal. These issues raise a separate question of availability.

If the claimant's reason for refusal of the work or referral to work was job related -- e.g., wages, hours, type of work, distance, etc. -- good cause or lack of good cause must be determined based on consideration of the claimant's length of unemployment, prior earnings/working conditions, prospects of other employment, and availability of work in the labor market.



HINT: *If the documentation does not clearly show all of the details of the offered:*

- (a) job, enter "I" (Inadequate) for Element 21 (Employer Information);
- (b) referral, enter "I" (Inadequate) for Element 22 (Information From Others).

If it is established that a bona fide offer of work or a referral to work was made, the wages, hours, or other conditions of the work offered must not be substantially less favorable to the claimant than those prevailing for similar work in the locality. If prevailing conditions (i.e., labor market conditions) are not documented, enter "N" for Element 22 (Information from others). If some, but not all, of the prevailing conditions are documented, enter "I" (Inadequate) for Element 22.

When a refusal of the work or referral to work decision that allows benefits also raises an A&A issue, the state agency policy will determine whether or not to resolve the A&A issue. Multiple issues may be addressed by the same set of facts (even when contained in the same statement). As long as there are facts to support each issue, a count may be taken for each determination. *For example:* While only one Able/Available/Actively Seeking Work issue may be reported per week, it is possible to report both an A&A and a Refusal of Work issue for the same week.

GUIDE SHEET 5

**DISQUALIFYING/OTHER
DEDUCTIBLE INCOME**

GUIDE SHEET 5 – DISQUALIFYING/OTHER DEDUCTIBLE INCOME

UC will be denied, or reduced, to any individual for the receipt of disqualifying income. This income may result in the total or partial reduction of weekly benefits.

Disqualifying or deductible income is governed by state law. Although state law provisions vary, most provide for disqualification or reduction in benefits for any week or part of a week during which the claimant receives income over a specified amount, such as earnings, wages in lieu of notice, dismissal pay, workers' compensation, back pay, holiday or vacation pay, payments made under an employer's pension plan or Old-Age, Survivors, and Disability Insurance (OASDI), and unemployment benefits under another state or Federal law.

A written determination must be issued to the claimant with respect to the first week in the claimant's benefit year in which there is a reduction for income other than earnings. A written determination need not be given for subsequent weeks or a transitional claim if the deduction is based on the same set of facts which applied to the first week.

The written determination must explain the rules and methods for computing the deduction, the period affected, and that there will be no further determinations issued for subsequent weeks if the future deduction is based on the same facts. If there is no explanation in the written determination, the state may instead provide the explanation in a claimant fact sheet, informational pamphlet or booklet. If the explanation is in a claimant fact sheet, informational pamphlet or booklet, the written determination must indicate that this is the location of the explanation.

There is an exception to issuing a written determination regarding earnings. A written determination is not required if, at the claimant's benefits rights interview or through an official state UI agency brochure or pamphlet, the claimant is advised of the conditions under which certain types of income are disqualifying or deductible. The claimant has to be advised that he/she must request a written determination before any appeal action can take place.

Income usually must be payable to be disqualifying or deductible. In other words, if an individual has been determined to be eligible for payments which are considered disqualifying under state law, the payments may be deducted by the state UI agency from the claimant's weekly benefit amount before actual payment is received by the claimant. The fact that the claimant has not received the income but is due the remuneration is considered "constructive receipt" for the purposes of UI eligibility.

Section 3304(a)(15), FUTA, addresses reducing a claimant's (UC) by any

GUIDE SHEET 5 – DISQUALIFYING/OTHER DEDUCTIBLE INCOME

pension, retirement, or similar periodic payment the individual is receiving. States must reduce UC due to receipt of retirement benefits only when a base period employer has contributed to the pension plan and (except for Social Security and Railroad retirement) the base period services affect eligibility for or increase the amount of the pension. States may also limit the amount of the reduction to take into account contributions made by the individual to the pension plan. States, therefore, have considerable latitude regarding how pensions are treated.

Many pension plans are subject to regular Cost of Living Adjustments (COLAs). The COLAs are often affected by changes to the Consumer Price Indexes (CPI), issued by the Department of Labor's Bureau of Labor Statistics. Government pensions with COLAs affected by changes to CPI include: Social Security Old Age, Survivors and Disability Insurance (OASDI); Supplemental Security Income (SSI) programs; Federal civilian pensions; Federal military pensions; and some state pensions. States are not required to conduct claimant fact-finding before issuing a determination each time a claimant's government pension is affected by a regular COLA that is based on the CPI or other publicly published document, but if they do not do so, the initial nonmonetary determination that reduces benefits must indicate that the amount of the reduction may change due to a COLA.



HINT: *If a nonmonetary determination involving a COLA is pulled for review that is based on a change in the CPI, then the original nonmonetary determination must be included in the case file as proof that the claimant was advised that the amount of the reduction may change due to a COLA.*

Additionally, any time there is a change in a claimant's pension amount, a separate determination notice must be made reflecting the effect on the claimant's benefit rights. The claimant must be given the opportunity to provide information before a determination can be made. Adjudicators must be aware of state law and policy affecting the receipt of this type of income.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT TYPE OF INCOME DID THE CLAIMANT RECEIVE?

The type of income the claimant received or will receive (wages, remuneration, pensions, etc.) and the period to which it is applicable must

GUIDE SHEET 5 – DISQUALIFYING/OTHER DEDUCTIBLE INCOME

be recorded during the fact-finding process to help determine the week affected and the deduction from the claimant's weekly benefit amount. If state law dictates the week to which holiday pay must be allocated, no verification from the employer or claimant is needed. (This only applies to holiday pay and not to any other type of income, such as vacation pay.)

All states require that weekly benefits be reduced if the claimant is receiving or will receive a pension from a base period employer. Therefore, it is important to determine whether the income also represents pension payments from a base period employer. In the case of pensions (also known as pension offsets), As explained in UIPL 22-87, Section 3304(a)(15), FUTA, requires that compensation be payable (constructive receipt) in order for the reduction to apply. Confirmation must be obtained from the employer or pension plan that a pension is "payable" before a reduction is made.

The type of income determines the formula the state applies for reducing the claimant's weekly benefit amount (WBA). In many states, when earnings are less than the WBA (based on a percentage that is disregarded), the claimant receives the difference between the amount deducted (after the disregard) and the WBA.

In others, a dollar-for-dollar reduction may apply, or no benefits are payable if the claimant receives disqualifying income regardless of the amount.

B. WHAT IS THE GROSS AMOUNT OF INCOME THE CLAIMANT RECEIVED?

The gross amount of income received is used to determine its impact on the claimant's WBA – present, past, or future.

It will be necessary to determine, based on the amount actually received or, in the case of pensions, "constructively received," the weeks to which the income is applicable and the amount of reduction required by law and policy.

C. IF THE CLAIMANT IS RECEIVING A PENSION, WHAT PERCENT WAS CONTRIBUTED BY THE CLAIMANT AND WHAT PERCENT BY THE EMPLOYER?

It may be necessary to know, based on the applicable state law and policy, how much each party contributed to the pension of the claimant. This information will determine the amount of deduction from the WBA. It

GUIDE SHEET 5 – DISQUALIFYING/OTHER DEDUCTIBLE INCOME

is important to know if the state reduces benefits only when a base period employer contributes to a pension plan or limits reduction taking into account contributions made by the individual to the pension plan.

D. WHAT PERIOD DOES THE INCOME COVER?

The state UI agency must determine the time period to which the income applies in order to establish the effective date of the deduction or disqualification. This period covered will also provide the state UI agency with the necessary information about the next modification to the claimant's benefits so that a new determination can be issued reflecting the change in circumstances and its effect on the claim.

E. WILL THE AMOUNT GO UP OR DOWN? IF SO, WHEN?

It is important to determine if future weeks will be affected so that the claim can be flagged for a subsequent determination modifying the claimant's weekly benefits and remaining benefit account balance. Document the effective date of the adjustment and the benefit week to which the adjustment applies.



HINT: *The party taking the action is the party from whom specific information must be obtained as to type and amount of payment. Depending on the type of payment in question, i.e., employer payments or pensions from other sources, the appropriate entry would be made either in Element 21 (Employer Information) or Element 22 (Information from Others).*

If information about a payment is received from an employer, the claimant must be contacted for verification of actual receipt of the payment and the amount. If no verification is made, enter either "I" (inadequate) or "N" (not obtained).

GUIDE SHEET 6

**REPORTING
REQUIREMENTS**

GUIDE SHEET 6 – REPORTING REQUIREMENTS

State policy (conforming to and complying with the Federal Claim Filing Standards – ESM 5000-5001) dictates when and how claimants are to file claims to maintain their continuing eligibility. State law also sets requirements for claimant reporting to provide information regarding a potentially disqualifying issue. It is therefore essential that BTQ experts consult state laws and policies when evaluating these and all types of nonmonetary determinations. For purposes of this discussion, failure to report or respond means: reporting, calling or e-mailing at a time other than assigned by the state UI agency; failing to respond via e-mail, or to report, or to call in, or be available by phone at an appointed time to provide needed claim information to resolve a potential issue; failing to respond to a call-in notice, appointment notice, e-mail notice, or message generated during the internet filing process for fact-finding or from the ES office for placement or referral considerations, eligibility reviews, worker profiling, registration, etc.



HINT: Some states adjudicate issues relating to a claimant's failure to report or respond under their A&A provisions. Typically, this occurs in states that lack reporting requirements legislation. If state law, policy, or written procedure supports this practice, the resulting A&A nonmonetary determination would not be scored as an incorrect issue (under Element 7 and 8).

State law dictates the protocols for resolving reporting requirement issues. In some states, the adjudicator must investigate the reason for the failure to report/respond to determine whether the claimant had good cause for failing to meet reporting requirements. However, if the state agency advises the claimant of his/her rights and responsibilities in the written notice and the claimant fails to contact the agency to establish good cause, the agency has met its responsibility.

State law may require excusing the first instance of failure to report and direct the state UI agency to warn the claimant that future benefits will be denied for failure to meet reporting requirements unless the state UI agency approves. This is important to remember when distinguishing reporting requirements from routine claimstakeing functions. When on the first instance of failure to report: (1) a warning is required, and (2) the reason for the failure to report is not considered in the decision to pay or deny benefits, then there is no potential to deny. The only outcome can be the acknowledgement in the claims file of the warning. There is no potential to deny benefits until a second incident occurs, and no count can be taken for a nonmonetary determination because there is no issue.

GUIDE SHEET 6 – REPORTING REQUIREMENTS

Many states also apply their reporting requirements provisions (i.e., filing and registration) to a claimant's request for backdating a claim to an earlier effective date, and/or to a claimant's request for weekly certifications that were filed untimely. A request for backdating may be based on the fact that the individual was: in partial unemployment for a period of weeks and unaware that benefits were payable during such periods of partial unemployment; given misinformation from state agency personnel regarding filing procedures; given erroneous information from his or her employer; or affected by other situations such as illness, death in the family, etc., which are recognized by the state for establishing a basis for allowing or denying the request to predate the claim. A request for payment of weeks that were filed (or attempted to have been filed) after the timeframe that a state normally allots, is typically considered untimely, and as with backdating requests, it may be allowed or denied depending on the circumstances.



HINT: Claimants often request backdating or untimely certifications that cover multiple weeks, and the claimant's failure to meet the state's reporting requirements is based on the same set of circumstances. In those instances, states must complete and count one determination that addresses all weeks requested.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT ARE THE STATE REPORTING REQUIREMENTS?

State law requirements dictate whether an issue exists or not. Were there mitigating circumstances that the state recognizes which would influence the outcome of the adjudication?

If a claimant does not report or respond as required by state law, a potentially disqualifying issue exists. State law may permit the claimant to receive benefits for a specific period of time if the claimant was ill. However, other factors may cause the claimant to be disqualified totally or partially for the week. For example, state law may require that benefits be denied or proportionately reduced if suitable work was offered to the claimant during the week being claimed and the claimant was unable to accept the work because of the illness.

If the state law requires a warning before a reporting issue can be potentially disqualifying, then the claim record must be reviewed to determine whether a warning was given to the claimant. If there was no prior warning, a countable nonmonetary determination does not exist.

GUIDE SHEET 6 – REPORTING REQUIREMENTS

Questions often arise about whether to adjudicate the underlying issue (i.e., the issue that was initially detected) or a reporting requirements issue, when a claimant fails to respond to a request for information regarding the issue initially detected. Typically, when sufficient information is available to adjudicate the underlying issue (e.g., a claimant's response on a weekly certification establishes an A&A issue), the underlying issue must be adjudicated under the relevant section of law rather than a reporting requirements issue, unless: (1) the type of issue that is underlying requires additional investigation before a determination can be made (e.g., a refusal of suitable work issue), or (2) state law and policy requires the adjudication of a reporting requirements issue.



HINT: *State law may require a state to complete a determination to deny the week that the underlying issue was detected (close-ended denial), and a reporting requirements determination to disqualify the claimant until the requested information is provided (open-ended denial), if the claimant is instructed to report/provide additional information relating to the underlying issue, but the claimant is unavailable/fails to provide the requested information. Both determinations would be countable, but they must be supported by state law and policy. Since such differences in adjudication practices exist among states, it is essential that BTQ reviewers verify a state's law and policy during their nonmonetary determination evaluation.*

B. DID THE CLAIMANT FAIL TO PROVIDE A STATE UI AGENCY OFFICE WITH REQUIRED CLAIM INFORMATION?

If the state requires a claimant to provide information which is needed to establish the claimant's benefit rights, e.g., social security number, DD214, or alien registration card, and the claimant fails to comply with the requirement, the failure may result in the denial of benefits.

C. WAS THE CLAIMANT REQUIRED TO REPORT TO THE EMPLOYMENT SERVICE OFFICE FOR A POSSIBLE REFERRAL OR TO REGISTER IN ACCORDANCE WITH STATE LAW?

It is important to determine under what circumstances a claimant failed to report to an ES office as directed. Many state laws provide for the denial of benefits to individuals who fail to: register with ES by whatever method the state requires the registration to be accomplished, such as Internet registration, etc; report to respond to a call-in card, letter, or message

GUIDE SHEET 6 – REPORTING REQUIREMENTS

relative to a job opening; meet required conditions for allowing the backdating of a claim to an earlier effective date, etc.

Failure to meet the reporting requirements can carry different penalties depending on the type of failure to report. The adjudicator may also elect not to impose a denial once all the facts are obtained (if state law and policy allow adjudicator discretion).



HINT: Generally, the disqualification (or penalty) period for reporting requirements determinations will begin the week that the claimant failed to report, respond, or provide information, unless the disqualification period is otherwise designated by state law, policy, or procedure. An incorrect disqualification period would be addressed in the quality score.

Additionally, in many instances, claimants who fail to report, respond, or provide information are disqualified until they report, respond, or provide the requested information; however, in other instances circumstances may warrant a one-week disqualification depending on the type of reporting requirement violation (e.g., failure to report for Worker Profiling Re-employment Services). If the duration of the disqualification period is applied incorrectly, it would be addressed in the quality score.

D. WHAT WAS THE CAUSE OF THE CLAIMANT'S FAILURE TO REPORT?

A determination to approve or deny a claim on issues of failing to report, in many states, requires inquiry into the cause of the failure. If the claimant establishes good cause, as defined by the state, the claim may be allowed. However, the facts may also give rise to an able/available/actively seeking work issue. The facts established by the adjudicator must be sufficient to support the determination rendered.



HINT: If the documentation does not establish that the claimant was given an opportunity to explain the reason for the late report or failure to report and the case file does not establish the adjudicator made a reasonable attempt to obtain the claimant's explanation, Element 20 must have an entry of "N".

GUIDE SHEET 6 – REPORTING REQUIREMENTS

E. WHAT THE WRITTEN NOTICE MUST CONTAIN TO ESTABLISH THAT THE AGENCY MET ITS RESPONSIBILITY

State provisions dictate whether a state has the responsibility of determining whether a claimant had good cause for failing to report or contact the state UI agency. States that consider good cause circumstances must examine the claimant's reason for failing to meet the reporting requirements of the agency, subsequent to the claimant's failing to report or contact the state UI agency as instructed.

To meet its responsibility and for claimant information to be considered adequate, a "good cause" state must obtain information, or make a reasonable attempt to obtain information from the claimant; however, the claimant information should be considered adequate when evaluating the quality of the determination if a claimant is notified to report or contact the state UI agency, and the notice:

- advises the claimant of the date and time to report,
- advises the claimant of the consequences of failure to report,
- provides the claimant with the necessary information and the opportunity to contact the state UI agency to explain the reasons for failure to report and/or reschedule, and
- advises that the state UI agency may consider whether the claimant had good cause for failure to report as directed.

Not all states include "good cause" provisions. Typically, in those states a claimant's failure to meet the reporting requirements of the agency results in an automatic disqualification (with no further investigation/inquiry), since the claimant's circumstances are not considered.

GUIDE SHEET 7

ALIEN STATUS

GUIDE SHEET 7 - ALIEN STATUS

Section 3304(a)(14)(A), FUTA, provides that UC shall not be payable on the basis of services performed by an alien unless the alien meets one of the following conditions:

- The alien was lawfully admitted for permanent residence at the time the services were performed,
- The alien was lawfully present for the purposes of performing the services, or
- The alien was permanently residing in the United States under color of law (PRUCOL) at the time these services were performed (see UIPL No. 1-86; UIPL No. 1-86, Change 1; and Supplement #3 of the Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566, and UIPL 14-91 for details on those aliens identified as being in PRUCOL status).

An alien, like any claimant, must be A&A, and to be available, the alien must be legally authorized to work in the United States at the time benefits are claimed - the latter giving rise to a potential availability issue.

On March 1, 2003, the former Immigration and Naturalization Service (INS) was abolished and its functions and units incorporated into the Department of Homeland Security (DHS). The responsibility for providing immigration-related services and benefits such as naturalization and work authorization were transferred to the U.S. Citizenship and Immigration Services (USCIS).

Two major eligibility issues require determinations concerning aliens. The first deals with monetary eligibility. Base period wages can be allowed to establish monetary eligibility only for those services the alien performed while in an acceptable legal category. The second deals with the alien's nonmonetary eligibility, i.e. the "otherwise eligible" component of all state laws--in this instance, availability. If the alien does not have authorization to work, or the authorization has expired, he/she is unavailable for work, and the issue must be adjudicated under state "availability" law.

The state UI agency is responsible for determining an alien's eligibility based on the facts and evidence substantiating the alien's legal work status. Therefore, a denial of benefits to the alien based on disallowed base period wages may only be done based on a preponderance of evidence. This means that the adjudicator must obtain necessary facts and sufficient evidence to support a finding that while the base period wages were earned, the alien was not in an acceptable status (totally, or in part). The adjudicator must weigh the evidence

GUIDE SHEET 7 - ALIEN STATUS

carefully and must be satisfied that the weight of evidence supports a conclusion that benefits should be denied.

Availability, as a requirement of being otherwise eligible, is applicable to all claimants, including aliens (equal treatment applies to all beneficiaries of the UI system).



HINT: *Foreign workers that have been granted H-1B status allowing them to remain in the U. S. provided they remain employed by a sponsoring employer are currently not considered available to work within the meaning of the availability requirements for UC if they lose the job under which they obtained their H-1B status.*

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WAS THE CLAIMANT'S ALIEN STATUS VERIFIED WITH THE USCIS?

The Immigration Reform and Control Act (IRCA) (PL 99-603), enacted November 6, 1986, requires state agencies to verify the alien's status with USCIS. It is critical to verify with USCIS the claimant's authorization to work at the time base period wages were earned and to establish current legal status to satisfy state availability requirements.

Verification is accomplished using the Systematic Alien Verification for Entitlement (SAVE) program or the Automated Status Verification System (ASVS). Two verification methods are available to states:

- (a) **Primary Verification.** This is an automated query by the state UI agency into the USCIS data base; and
- (b) **Secondary Verification.** This process is used when indicated by the primary verification system ("initiate secondary verification"), when documentation provided by the alien is suspect or altered, or contains invalid alien registration numbers (A-50,000,000 to A-60,000,000 series), and when designated states are waived from using the primary verification. Secondary verification involves a more thorough search of USCIS files to validate the alien's legal status. USCIS conducts an in-depth search of the Alien Control Index. (Refer to SAVE program manual for in-depth

GUIDE SHEET 7 - ALIEN STATUS

treatment of alien documentation and verification procedures.)

Since the implementation of SAVE, USCIS has re-engineered the way it delivers immigration status verification information by automating the secondary verification process. ASVS is an access method that eliminates the need, in most cases, for state UI agencies to fill out forms, copy immigration documents and send secondary requests via mail.

Verification with USCIS must confirm the documentation provided by the claimant.

Section 1137(d)(4)(A), SSA, requires that aliens be provided with a reasonable opportunity to submit evidence indicating a satisfactory immigration status, and that states may not delay, deny, reduce, or terminate the individual's eligibility for benefits until such a reasonable opportunity has been provided. Disallowance of an alien's base period wage credits may only be done based on a preponderance of evidence (evidence which exists that has a greater weight and is more persuasive in supporting a finding of fact). The facts and evidence obtained must come from the claimant or the USCIS via SAVE, who may provide information to support the determination to deny the use of all, part, or none of the base period wages. Facts must be sufficiently detailed to support the determination to deny and must include:

- Dates of authorization
- Copies of original documentation
- Verification from USCIS (SAVE)

B. WHAT WAS THE ALIEN'S LEGAL STATUS DURING THE STATE'S BASE PERIOD?

The alien must provide proof that he/she was in a satisfactory immigration status as determined by the USCIS to work in the United States during the state's base period. A number of documents issued by the USCIS allow aliens to reside and work in the United States. Among them, the principal authorizing document is the Permanent Resident Card, more commonly referred to as the "Green Card" and formerly known as the Alien Registration Card (ARC),

Monetary eligibility is based solely on wages legally earned during the base period and applies to the new initial claim. The period the alien was authorized to work must be established to determine if all,

GUIDE SHEET 7 - ALIEN STATUS

some, or none of the alien's base period wages were earned while he/she was in legal status.

If the alien refuses to provide requested information or documentation to establish eligibility for benefits, the issue must be resolved under the state's claim filing requirements (failure to provide requested information for establishing a claim).

C. WHAT IS THE CURRENT WORK STATUS OF ALIEN?

An alien's current availability for work rests with the alien's authorization to work and the period authorized. Verification is necessary to ensure that benefits are not paid beyond the expiration date of the work authorization, regardless of a valid determination of monetary eligibility; however, this issue must be resolved and reported as an availability issue.

- In order to maintain continuing eligibility based on the availability requirement of state law, the alien must still be legally authorized to work. Expiration of legal authorization to work requires an adjudication of the alien's availability for work.
- Meeting state availability requirements can only be determined when the expiration date of the alien's work authorization has been established. An alien is not available to work if his/her authorization to work legally in the United States has expired.

EXCEPTION: CANADIAN CITIZENS -- Canadian nationals filing under the Interstate Benefit Payment Plan need only satisfy Canadian availability requirements. To determine availability the adjudicator must obtain a fact-finding statement and verification from the Canadian agency that the alien meets Canadian availability requirements. Failure to meet Canadian requirements should result in a denial of benefits.

D. ALIEN PERMANENTLY RESIDING UNDER COLOR OF LAW (PRUCOL).

Adjudicating issues related to PRUCOL status is the most problematic of the alien status determinations. As explained in UIPL No. 1-86, to be considered under PRUCOL, an alien must meet the requirements of a two-part test: (1) the USCIS must know of the alien's presence and provide the alien with written assurance that enforcement of deportation is not planned; and (2) the alien must be "permanently residing" in the United

GUIDE SHEET 7 - ALIEN STATUS

States. A mere application for PRUCOL status does not convey permanence. The USCIS must affirmatively determine the alien's PRUCOL status.

In order to establish PRUCOL status, the alien must provide the agency with written assurance that enforcement of deportation is not planned or documentation verifying his/her legal status. The adjudicator then must obtain substantiating proof of PRUCOL status from USCIS via SAVE procedures. Confirmation from USCIS will determine whether the alien was granted permanent residence status and therefore has met UI eligibility requirements.

The Immigration and Nationality Act (INA) defines permanent as "a relationship of [a] continuing or lasting nature . . . even though it is one that may be dissolved eventually at the instance of either of the United States or the individual. . . ". PRUCOL applies to only:

- Aliens admitted as refugees, asylees or parolees (see Sec. 207, 208 and 212(d)(5), INA).
- Aliens presumed to have been lawfully admitted for permanent residence although they lack documentation of their admission to the U.S. (see Supplement #3 of Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566).
- Aliens who, after USCIS review, have been granted lawful immigration status to remain in the U.S. indefinitely or are members of a class who have been authorized to remain in the U.S. indefinitely (see UIPL No. 1-86, and UIPL No. 1-86, Change 1).



HINT: All claimants who are not citizens must have their legal status verified with USCIS. This is only a routine verification and is not an issue requiring a nonmonetary determination. Even if USCIS requests a state to institute secondary verification, an issue only exists if USCIS indicates there is a problem. If USCIS indicates there is a problem, an investigation may result in two nonmonetary determinations, one for current availability under the state's A&A law and a nonmonetary suppressing the base period wages under the Alien Status section of law.

GUIDE SHEET 8

**EDUCATIONAL
EMPLOYEES BETWEEN OR
WITHIN TERMS**

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN AND WITHIN TERMS

Section 3304(a)(6)(A), clauses (i) – (vi), FUTA, provide exceptions to the equal treatment provisions of section 3304(a)(6)(A), FUTA, with regard to determining eligibility for certain categories of claimants employed by educational institutions, Educational Service Agencies (ESAs), and certain other entities, including certain Head Start¹ programs.

These provisions are often referred to as the "between or within terms denial" provisions because they provide that benefits are not payable based on services performed for educational employers (1) between two successive academic years or terms, and when an agreement provides instead for a similar period between two regular but not successive terms, or (2) during an "established and customary vacation period or holiday recess" that occurs within an academic term. For this denial to apply, the claimant must have a contract or reasonable assurance of employment for the following year, term, or remainder of a term. These denial provisions do not apply to services performed for non-educational employers. As such, these non-educational services may be used to establish monetary eligibility, provided the claimant meets all other state eligibility requirements.

Federal law prohibits the use of base period wages to establish monetary eligibility based on services performed in an instructional, research, or principal administrative capacity (a "professional" capacity) for educational employers when a contract or reasonable assurance exists of performing services in the next academic period. Thus, all state laws will have conforming provisions for professional services. Federal law permits similar treatment for services performed in any other capacity (a "nonprofessional" capacity, such as custodial or cafeteria services) and for services performed by employees of state and local governments, nonprofit organizations and federally recognized Indian tribes if they provided services "to or on behalf of" an educational institution (such as school crossing guards). (See UIPL No. 43-93.) Thus, not all states have laws paralleling these "nonprofessional" provisions. Whether this prohibition on the use of services applies to UCFE and UCX claims depends on how state law is written. (See UIPL No. 11-86).

The state UI agency is responsible for determining whether the claimant has a contract or reasonable assurance of performing services in the next academic period. In determining whether reasonable assurance exists, the state UI agency must consider the questions and factors discussed below. Also, if a "crossover" situation (as explained in Section E, below) exists, the claimant may not be denied even if he or she otherwise has a reasonable assurance.

¹ To determine which Head Start agencies are subject to the between / within terms denial, consult UIPL 41-97.

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN OR WITHIN TERMS

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. IS CLAIMANT IN "BETWEEN OR WITHIN TERMS" STATUS?

The state UI agency must determine the beginning and ending dates of the academic period (or vacation or recess) in question. The requirement that educational services not be used pertains only to (1) periods between academic years and terms, and (2) vacations and recesses occurring within an academic term. Also, the state UI agency must determine that the claimant has performed services during the *prior* academic period for the denial to apply.

B. DOES A CONTRACT OR REASONABLE ASSURANCE EXIST?

UIPL No. 4-87 provides that, to meet the test of reasonable assurance:

- There must be a bona fide (genuine, good faith) offer of employment in the second academic period. An offer of employment is not bona fide if only a possibility of employment exists.
- The assurance must be given by an authorized individual. If the individual was not authorized, the offer is not bona fide, and no reasonable assurance exists.
- The terms and conditions of the job offered in the second academic year or term must not be substantially less (as defined by state law and policy) than the terms and conditions for the job in the first period.

A reasonable attempt must be made with the educational employer to obtain a statement either by telephone or in writing that the employee was given a bona fide offer of a specified job in the next academic period or term. Facts must establish how the offer was conveyed and whether the person who made the offer was authorized to do so. The case file must be documented with the terms of the offer, the name of the person authorized to make the offer, and date of return to work for the school employer.

The claimant's employment status with the educational employer must be explored to determine if reemployment is automatic. Certain employees (usually teachers) attain tenured status guaranteeing them automatic

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN OR WITHIN TERMS

reemployment. The status of others, such as non-tenured teachers (year-to-year only based on fund availability - no automatic guarantee of reemployment), substitutes, and other professional or non-professional employees of educational institutions, or those who provide services to them (school crossing guards employed by police departments, among others), must also be established. It may be customary that from year to year the budget for the various positions is not known until a later date. If this is customary and the claimant's employment pattern with the employer substantiates this, then the individual has reasonable assurance.

This information is important to know if it is later established that funding is not available. If funding is not available, the “between or within terms” issue may change to a “lack of work.” In the case of non-professional employees, the claimant may be entitled to a retroactive payment for each week the claimant filed a timely claim (as determined under state law). In the case of professional employees, the only way to retroactively pay benefits is to establish that there was no reasonable assurance because there was no bona fide (genuine, good faith) offer of employment.

Note that reasonable assurance will exist even if the educational employer offering the job in the second period is different from the employer in the first period.

C. WHAT ARE THE TERMS AND CONDITIONS OF THE JOB OFFERED?

For reasonable assurance to exist, the economic terms and conditions of the job offered for the next period must not be substantially less than those applicable to the first period. The employer must provide sufficient information concerning the terms and conditions of the job offered for the next academic period for the adjudicator to determine whether the economic terms and conditions of the job offered for the next period are not substantially less than those applicable to the first period.

If the claimant rejects a bona fide offer, an issue regarding a separation or refusal of work (as determined under state law) would exist.

D. HOW ARE SEPARATION ISSUES COORDINATED WITH REASONABLE ASSURANCE ISSUES?

It may be necessary to coordinate a reasonable assurance issue with a separation issue. For example, when the educational employer advises the state UI agency that the claimant has refused an offer of employment for the fall term, a separation issue will exist. State law determines when or whether the state UI agency must adjudicate a separation issue. For

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN OR WITHIN TERMS

example, some states do not adjudicate a voluntary quit issue unless the work is currently available, which means that a separation issue would not exist until the fall term.

That a separation issue has been resolved does not mean that there is no need to determine whether a contract or reasonable assurance exists. A contract or reasonable assurance does not necessarily end because the school employee refused to return to work with the same employer in the next academic period. If the separation issue will not be adjudicated until the following academic term, the reasonable assurance issue must be adjudicated immediately. In some cases, the facts related to the reason for separation may assist in determining whether reasonable assurance exists.

Separation and/or nonseparation issues that occur at times other than between academic years or terms, or during vacation periods or holiday recesses within terms, involving employees of educational institutions, ESAs, and certain other entities, will be adjudicated under the regular provisions of state law. The state UI agency, however, must adjudicate the reasonable assurance issue at the beginning of the next break in the academic term to determine if reasonable assurance applies. The adjudication could result in a determination that suppresses wages until the break in terms or vacation/holiday recess period ends, or one that allows the wages to continue to be used because reasonable assurance no longer applies.

E. DO THE EXCEPTIONS FOR “CROSSOVERS” APPLY?

The between and within terms denial is not applicable to certain situations called “crossovers.” Crossovers occur when (1) a claimant who performed services in one capacity (i.e., professional or nonprofessional) has a reasonable assurance of performing services in the other capacity, or (2) a claimant goes from one type of academic employer to another (e.g., from an educational institution to an ESA.) Details for some crossover situations are found in UIPL Nos. 18-78 and 30-85.

The following examples illustrate crossover situations:

Example No. 1: The between-terms denial does not apply when crossing over from a professional to a nonprofessional capacity, or vice-versa. For example, a teacher (a professional) at an educational institution receives assurance of a job in the next period as a teacher’s aide (which is, for purposes of the between and within terms denial, a nonprofessional classification because the services are not performed in an instructional, research, or principal administrative capacity). Because

GUIDE SHEET 8 – EDUCATIONAL EMPLOYEES BETWEEN OR WITHIN TERMS

the individual is "crossing over" from one capacity (professional) to another (nonprofessional), the between-terms denial does not apply.

(Note: the within-terms denial does apply in this type of crossover situation.)

Example No. 2: The between and within terms denial does not apply when crossing over from one type of educational employer (i.e., an educational institution, ESA, or entity providing services to or on behalf of an educational institution) to another type. For example, a school crossing guard who is employed by the local police department receives assurance of a job as a cafeteria worker for the local school. The individual is "crossing over" from one type of employer (one providing services to or on behalf of an educational institution) to another type of employer (an educational institution). Because of this, the between and within terms denial does not apply.



HINT: Typically, an investigation of the circumstances surrounding an educational employee's employment results in a countable nonmonetary determination regardless of whether the individual is allowed or denied under the between and within terms provision. An Educational Employees Between and/or Within Terms nonmonetary determination is necessary to determine whether the between and/or within terms provision applies, and if so, the agency must also complete a monetary determination to exclude the use of the wages earned while in educational employment.

GUIDE SHEET 9

**PROFESSIONAL ATHLETES
BETWEEN SEASONS**

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

Section 3304(a)(13), FUTA, requires that compensation shall not be payable to any individual on the basis of services, substantially all² of which consist of participating in sports or athletic events, or training or preparing to participate, for any week between two successive sports seasons, if the individual performed services in the first season (or similar period), and there is a reasonable assurance that the individual will perform services in the second season (or similar period).

The state UI agency is responsible for determining whether the claimant has reasonable assurance of performing services in the next ensuing athletic season or similar period. To determine whether there is reasonable assurance that the individual will be playing the next season or in a similar period, the state UI agency must establish if:

- There is a contract, written or verbal, or
- The player offered to work and the employer expressed his/her interest in hiring the player for the next season or a similar period, or
- The athlete expresses a readiness and intent to participate in the sport for the next season. The fact that the athlete may not have a formal offer from a professional athletic organization does not mean that reasonable assurance does not exist. Reasonable assurance is evident if the claimant asserts that he/she intends to pursue employment as a professional athlete for the next season or similar period.

States have the option of broadening the definition of an athlete to include ancillary personnel involved with the team or professional event. This may include managers, coaches, and trainers employed by professional teams, or referees and umpires employed by professional leagues or associations. Denial of benefits to these groups is a state option. State law and policy must clearly identify those individuals subject to disqualification under its "professional athlete" provisions.

² The term "substantially all" has been interpreted to mean 90% or more of the claimant's services in the base period were performed as an athlete. (See UIPL 18-98, and Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 – P.L. 94-566, and Supplements 1-5.)

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. IS THE CLAIMANT BETWEEN SUCCESSIVE SPORTS SEASONS?

It is not required that the individual perform the services for the same professional athletic organization to be considered "between successive sports seasons."

Determine the type of sport in which the claimant participated and the official beginning and ending dates for that sports season.

Review dates to determine whether the period of benefits claimed is before, during, or subsequent to the official sports season. If the claim for benefits falls between the official season or period and the claimant does not have reasonable assurance of performing such services in the next season or similar period, benefits may be payable.

B. WERE SUBSTANTIALLY ALL (90% or as defined by state law) OF THE CLAIMANT'S SERVICES PERFORMED DURING THE BASE PERIOD IN A PROFESSIONAL SPORT?

The fact to be established is whether the claimant actually was employed as a professional athlete during the base period.

If substantially all services during the base period were performed as a professional athlete, then NONE (athletic and non-athletic) of the base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between sports seasons or similar periods.

If, however, less than 90% (or the amount determined by state law) of the claimant's services were performed in professional sports, then ALL (athletic and non-athletic) the claimant's base period wages may be used to establish monetary eligibility for any weeks that begin during a period between sports seasons or similar periods.

C. DOES THE CLAIMANT HAVE REASONABLE ASSURANCE OF PERFORMING THE SAME OR SIMILAR SERVICES DURING THE NEXT SEASON OR SIMILAR PERIOD?

It is not required that the individual perform the services for the same professional athletic organization for reasonable assurance to exist.

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

The claimant's continuing employment relationship with a professional sports team, league, or association must be clearly established. It is possible that the claimant decided not to return to work or was released by the employer, which would raise a separation issue.

If there is no separation issue, information from the claimant must address his/her understanding about returning to work for the employer during the next sports season, who provided the claimant with assurance of returning the next season and whether that individual was authorized to do so.

It is possible that the individual had only a one-year contract and was released. If, however, the individual is free to negotiate with others for his services, then reasonable assurance is evident if the claimant asserts that he/she is focused on pursuing employment as a professional athlete for the next season or similar period.

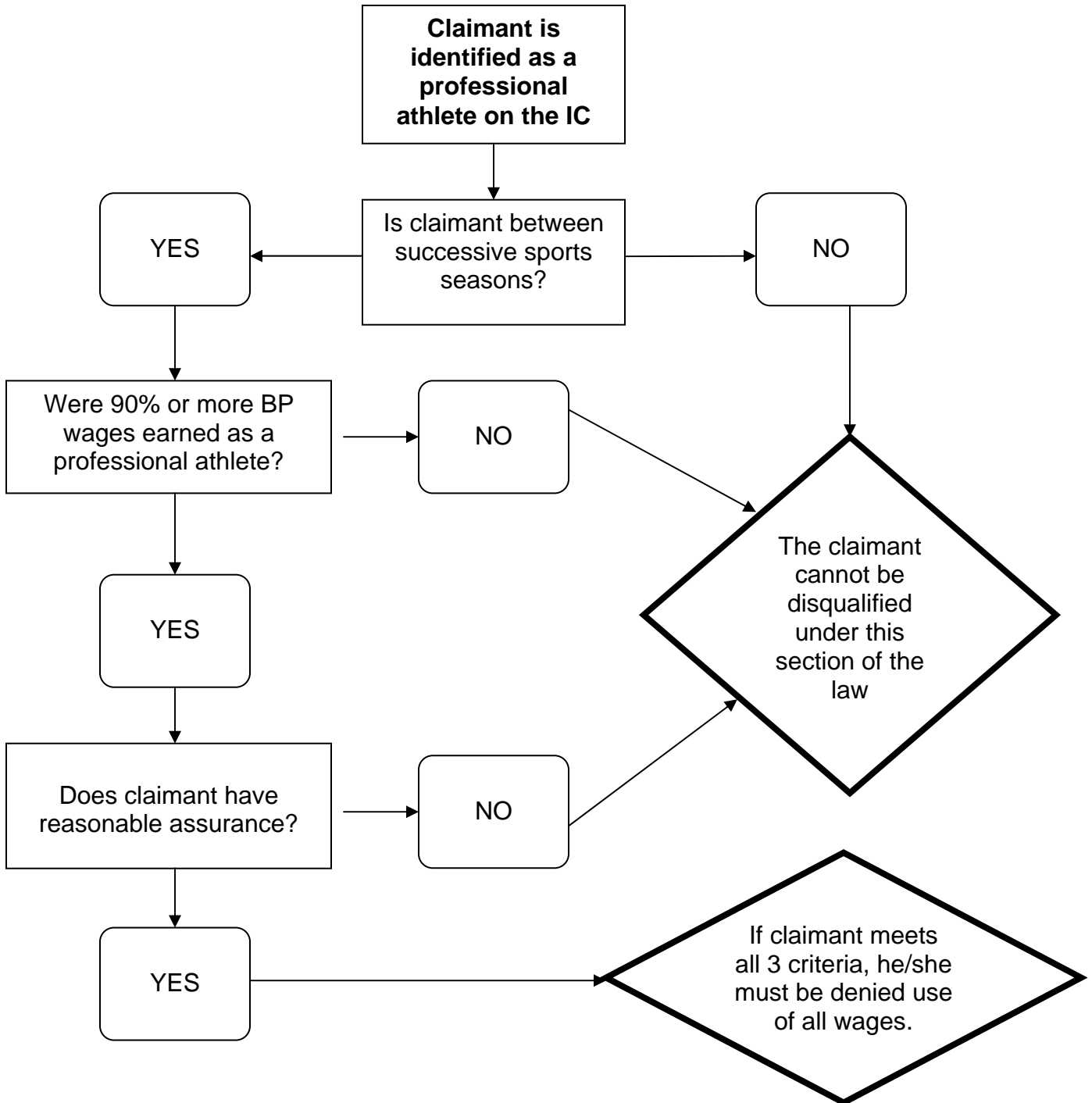
If it is clearly established that the individual has withdrawn from professional athletics at the expiration of his/her contract, then reasonable assurance is not present. There is no need to probe further.



HINT: All states were required to apply the "substantially all" criteria to base period wages. Most states opted to use the 90% amount as defined by Supplement #1 -- Questions and Answers -- which supplemented Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L.-566. A state may choose to be more stringent in defining "substantially all". All evaluators must be aware of the definition before reviewing the case.

GUIDE SHEET 9 - PROFESSIONAL ATHLETES BETWEEN SEASONS

Professional Athlete



GUIDE SHEET 10

**FRAUD ADMINISTRATIVE
PENALTY**

GUIDE SHEET 10 – FRAUD ADMINISTRATIVE PENALTY

All states have laws which provide for an additional administrative penalty to be applied when claimants commit fraud by willfully misrepresenting or concealing material facts in order to obtain benefits to which they are not legally entitled. In addition, Public Law (P.L.) 112-40, enacted October 21, 2011, included a requirement that states to impose a monetary penalty on claimants whose fraudulent acts resulted in an overpayment. Misrepresentation or concealment of material facts by a claimant commonly relates to unreported earnings; misinformation about employment or separation from employment; availability; ability; efforts to obtain work; dependants; vacation pay; pension; concurrent filing for benefits in two or more states; collusion with an employer on exaggerated or unreported earnings; or fictitious employment.

The most common type of fraud occurs during a continued claims series when the claimant fails to correctly report earnings. These incidents are most frequently detected by the benefit wage cross-match, interstate benefit (IB) cross-match, or the Directory of New Hire cross-match. (P.L. 112-40 expanded the scope of individuals reported to the state directory of new hires.) If the adjudicator reviews the information returned by the employer as a result of any type of cross-match and considers assessing an administrative penalty due to fraud or concealment by the claimant, these determinations must be reported in column 17, lines 301 and 302 of the ET 207 report, Nonmonetary Determination Activities.



HINT: Only the Administrative Penalty portion of a fraud nonmonetary determination is countable! Any other nonmonetary determination resulting from a fraud investigation (e.g., Overpayment without an Administrative Penalty) is not reportable; must not be in the sample universe; and must be scored as “Invalid,” or “00.”

BASIC FACTORS AND QUESTIONS TO CONSIDER

A. WHAT WAS THE METHOD OF DETECTION?

There are many methods used to detect potentially fraudulent activity by the claimant. The results may lead to a finding of fraud if the facts establish the claimant willfully misrepresented or concealed material facts in order to obtain benefits to which he/she was not legally entitled. Some of the methods used to detect incorrect information may include:

- Cross-match programs, (e.g., Directory of New Hires, Benefit Wage, IB)
- Fraud Hotlines

GUIDE SHEET 10 – FRAUD ADMINISTRATIVE PENALTY

- Tips and Leads from outside sources
- Information from employers or others
- Agency information (e.g., job refusals)

Claimants must be informed about and provided an opportunity to rebut allegations or findings of potential fraud. The claimant must be contacted and the information must be discussed with the claimant (or a reasonable attempt made) before a finding of willful misrepresentation can be made.



HINT: The issue detection date for a Fraud Administrative Penalty issue is the date that the agency became aware or should have been aware of the issue. For example, the issue detection date is the date that the state agency received the unreported earnings information from the employer Note: For tips, the issue detection date is the date the tip is received.

B. WHAT WERE THE CLAIMANTS' ACTIONS?

It is the responsibility of the state UI agency to inform the claimants of their rights and responsibilities when filing for benefits. At any time during the claims process, a claimant may give information that is later determined to be incorrect. This inaccurate information may be given unintentionally such as when a claimant was given incorrect information by the employer, or failed to understand instructions given by the state UI agency. The reasons must be closely examined by the state UI agency to determine whether the claimant willfully misrepresented any material facts.

The adjudicator must document everything that was considered in making the determination. For example, the adjudicator may consider and ask questions such as: What is the claimant's educational level? Were there any language barriers? Had the claimant previously filed for benefits? If so, how often and were there any issues on the prior claims? How are claimants given instructions regarding their rights and responsibilities? Are instructions given verbally or mailed in a pamphlet? What information did the state UI agency provide to the claimant concerning reporting requirements?

All relevant information provided by employers and/or third parties must be considered by adjudicators in making their determination. However, the claimant must be contacted and allowed to rebut any potentially disqualifying information.

GUIDE SHEET 10 – FRAUD ADMINISTRATIVE PENALTY



***HINT:** All corresponding documentation used in determining fraud must be included in the case file. This includes documents from prior benefit years.*

GUIDE SHEET 11

LABOR DISPUTES

GUIDE SHEET 11 – LABOR DISPUTES

Most states deny unemployment benefits to claimants if they are out of work due to a labor dispute other than a lockout at the place of employment, although state laws and policies vary regarding conditions of eligibility when labor disputes are involved. Some states allow benefits because of a lockout or failure of the employer to conform to the provisions of a labor contract, while others deny benefits for the duration of the dispute regardless of the cause. In almost all states, a denial period is tied to the duration and progress of the dispute.

The circumstances surrounding the dispute must be fully investigated to establish whether the claimant is a member of a striking class of employees; the cause of the dispute, (e.g., an employer's failure to conform to the terms of a labor contract); when the dispute arose; and the duration of the dispute.

If the dispute has ended, information about the length of time the company will need to resume normal operations and the reason for any delay is required to determine the claimant's employment status at the time the dispute ended. For example, the employer may not be able to resume normal operations because of the lead time necessary to prepare or repair equipment (if damage occurred during the dispute), thus causing a lack-of-work situation. Investigation of the impact of the dispute on operations may be a factor in determining the claimant's eligibility for benefits, depending on the time benefits are sought.

State law and policy may provide for the benefits where a labor dispute is in progress at the claimant's place of employment, but the claimant is not participating in or directly involved in the dispute. This is particularly important if state law and policy prohibits penalizing workers who are locked out of work as a result of the employer's actions.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT GROUPS ARE INVOLVED IN THE DISPUTE?

It is necessary to identify who is involved in the dispute, the extent of their involvement, and whether the claimant is a part of any group involved or affected by the labor dispute. This is important when determining who is actively participating in the dispute, and who is unemployed as a result of the dispute due to lack of suitable work. Some classes of workers may be ready, willing, and able to work, but are prevented from doing so because they are locked out of their place of employment as a result of the dispute.

GUIDE SHEET 11 – LABOR DISPUTES

Corroboration of the claimant's status with the employer and the claimant's union must provide sufficient information to establish whether the claimant is directly participating in the dispute.

Information about the nature of the dispute, including identification of those directly involved and those adversely affected by the dispute, must be obtained from the claimant, union, and employer. The state UI agency may also need to obtain the facts of the dispute from an independent arbitrator who is leading settlement negotiations.

It is important to determine whether the individual is actually participating in the labor dispute. Could the claimant have continued to work or returned to work, except for refusal to cross a picket line set up by another class of workers? What prevented the claimant from returning to work? Was safety a factor? Are there other reasons?

B. WHEN DID THE DISPUTE BEGIN?

The date the labor dispute began establishes the duration of any disqualification the state may impose and which must be cited in the determination.

C. WHAT WAS THE CLAIMANT'S EMPLOYMENT STATUS AT THE TIME OF THE DISPUTE?

It is important to know if the labor dispute was the cause of the claimant's unemployment or if the claimant was in a period of unemployment at the time the labor dispute began.

If the claimant was in an indefinite layoff status at the time of the dispute then he/she may not be subject to disqualification because his/her unemployment is not related to the labor dispute.

If the claimant had a definite date of recall, was recalled by the employer during the labor dispute, but refused to report, a separation issue may exist requiring resolution under state separation provisions.

D. WHAT IS THE REASON FOR THE LABOR DISPUTE?

Because most states have adopted the principle of neutrality in labor disputes, disqualifications may be perfunctory, with benefits denied for the duration of the dispute. If this is the case, then the issuance of determinations is a fairly routine matter not requiring a great deal of inquiry. The state's statutory provisions are applied uniformly, the denial is issued and no further inquiry is required. However, some states have specific exceptions to the neutrality principle and permit the allowance of

GUIDE SHEET 11 – LABOR DISPUTES

benefits under certain conditions.

Some states allow benefits in cases of a lockout to avoid penalizing employees for the actions of the employer, for the employer's failure to abide by the terms of a labor contract, and when the employer failed to conform to any Federal or state law on labor standards matters which are central to the labor dispute such as wages, hours, or working conditions. Facts must be obtained from the interested parties such as claimant, employer, and bargaining unit (if applicable), or other third parties to establish whether any of the above conditions exist.

The weight of the evidence obtained in conjunction with applicable state and Federal labor standards shall provide the basis for evaluating the quality of labor dispute determinations.

E. WHAT EMPLOYMENT LOCATIONS ARE INVOLVED IN THE DISPUTE?

Identifying the location of the dispute is important to establish whether it directly affects the claimant's place of employment. The dispute may occur at a remote location, but render the claimant's facility inoperable or diminish operations causing the claimant's unemployment.

The relationship of the dispute to the operations of the claimant's place of employment must be probed because the claimant may belong to the same class of employees whose actions at one location are causing disruptions in operations at other employer locations. State law or policy dictates if the labor dispute determinations reach beyond the immediate location affected to include any establishment within the U.S. which is functionally dependent or integrated with the striking facility owned by the same employing unit. To establish the affect of the labor dispute on operations in the claimant's place of employment determine whether there was a forced slowdown/shutdown of operations, a reduction in force, or whether non-labor dispute participants were adversely affected.

F. IS THE CLAIMANT FINANCING OR DIRECTLY INTERESTED IN THE LABOR DISPUTE?

Many states deny benefits to any individuals or classes of workers who are actively engaged in the labor dispute or are financing or otherwise directly interested in the dispute. Facts obtained from the claimant (or the claimant's agent if he/she belongs to a collective bargaining unit) will establish whether the claimant falls in any of these categories.

The claimant's bargaining unit, although not directly involved in the labor dispute, may be subsidizing one or the other parties in the dispute. In

GUIDE SHEET 11 – LABOR DISPUTES

most cases this is in the form of a financial contribution from the claimant's union to the striking union. The intent is to build support for the claimant's bargaining unit which also has a collective bargaining agreement with the same employer. By offering such financial support, paid through the claimant's union dues or other assessments, a direct interest in the outcome of the dispute is exhibited (a self-serving act which may serve to prolong the labor dispute).



HINT: Do not penalize the adjudicator for missing claimant information if the necessary facts are furnished by a representative of the labor union involved in the dispute.

GUIDE SHEET 12

**WORKER PROFILING AND
REEMPLOYMENT SERVICES**

GUIDE SHEET 12 - WORKER PROFILING AND REEMPLOYMENT SERVICES

Section 303(j) of the Social Security Act, added in November 1993 by Public Law 103-152, requires that all states profile all new claimants for UC to identify those who will likely exhaust their benefits and who will need job search assistance services to make a successful transition to new employment.

Under this system, identified claimants may be referred to reemployment services which include job search assistance, job placement services, counseling, testing, provision of occupational and labor market information, assessment, job search workshops, job clubs, referrals to employers, and other similar services.

Familiarity with UIPL No. 41-94, issued August 16, 1994, as well as state law is necessary to properly evaluate Worker Profiling and Reemployment Services (WPRS) determinations.

Claimants must be held ineligible for any week in which claimants refused to participate in reemployment services which they are required to attend unless they: (1) have justifiable cause, (2) have completed such services, or (3) are attending similar services.



HINT: Instances where the claimant refuses to participate in reemployment services should be completed under the Worker Profiling provisions (e.g., s/he states they will not participate in reemployment services). Instances where the claimant fails to report for a reemployment service are completed under the reporting requirements section of law.

Justifiable cause for refusal to participate in reemployment services or similar services is determined by the "reasonable person" test. The justifiable cause exception does not supersede state able/available/actively seeking work provisions, e.g., a claimant's illness may be justifiable cause for not accepting referral to reemployment services, but will raise the issue of eligibility under the able/available/actively seeking work provisions of state law.

A claimant must not be held ineligible if the failure to participate is minimal and does not significantly affect his/her ability to benefit from the reemployment services in attempting to obtain new work; e.g., if a claimant misses one hour of an eight-hour seminar, the state may find that this limited absence is not a failure to participate.

Claimants who have completed reemployment services are not required to participate in such services and, therefore, must not be held ineligible. This

GUIDE SHEET 12 - WORKER PROFILING AND REEMPLOYMENT SERVICES

includes "similar services." The date of completion must be considered in arriving at a decision of justifiable cause for refusal to participate.

A claimant is not required to participate in reemployment services to which s/he is referred if s/he is participating in "similar services." These are defined as reemployment services that claimants are attending on their own initiative, e.g., services offered by a company before a permanent layoff, or services offered by private employment agencies. These services need not be identical to those to which the claimant was referred by the state; they need only be reasonably similar. The state UI agency must perform sufficient fact-finding to determine whether, in fact, the services are similar.

The state agency also bears the responsibility to determine whether the referral is proper if the claimant questions the need for reemployment services.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. HOW WAS THE CLAIMANT NOTIFIED AND WHAT WAS THE CONTENT OF THE NOTICE?

The claimant must be notified in writing of the referral and advised of the following: (1) that s/he has been identified as likely to need reemployment services in order to make a successful transition to new employment; (2) when and where to report for the services; and, (3) that failure to participate in reemployment services may result in denial of UC benefits. If the state UI agency does not conform to all of the above requirements, there is no issue. Documentation must reflect the method by which the claimant was notified.



HINT: There is no issue if the state UI agency or their designated service provider does not include required information in the call-in notice to claimant.

B. WHAT WAS THE REASON(S) FOR THE CLAIMANT'S REFUSAL?

If the claimant refused because of prior completion of reemployment services, obtain written documentation of such completion. How recently

GUIDE SHEET 12 - WORKER PROFILING AND REEMPLOYMENT SERVICES

did the claimant complete the services? Has the claimant recently completed, or is the claimant currently participating in, similar services? Determine whether the similar services were of sufficient quality to be acceptable in lieu of this referral. Also, determine the date of completion.

C. WAS THE REASON FOR REFUSAL CONTROLLABLE OR UNCONTROLLABLE?

It must be determined whether the claimant's reason(s) for refusing services were within his/her control. If the reason(s) is within the claimant's control, what efforts did the claimant make to resolve the controllable reason?

GUIDE SHEET 13

UNEMPLOYMENT STATUS

GUIDE SHEET 13 – UNEMPLOYMENT STATUS

An Unemployment Status determination is necessary if there is a question whether the claimant's activities or status constitutes service or employment, or if the claimant earned wages or received remuneration for employment sufficient to render him/her ineligible as "not unemployed" or "partially unemployed."

As noted on page I-4-10 of ETA Handbook 401, Unemployment Status determinations are categorized as miscellaneous, which means circumstances such as Unemployment Status are countable nonmonetary determinations only when a disagreement arises on facts or application of the law. For example, based on the employer's statement of earnings a claimant is awarded only partial benefits for a specific week. The claimant objects to the reduction in benefits on the grounds that the employer's statement is incorrect. Because of disagreement over the accuracy of the employer's statement, the state issues and counts a nonmonetary determination based on the information obtained. If the claimant had agreed with the employer's information, a determination would not be needed or counted.



HINT: *This category does not include payments of workers compensation, OASDI benefits, unemployment benefits under another state or Federal law, dismissal payments of wages in lieu of notice, vacation or holiday pay, and payments made under an employer's pension plan, as these issues are determined as Disqualifying Income Issues.*

Situations relating to whether the claimant's activities or status constitute service or employment are sometimes associated with a disagreement over application of law. For example, a claimant acknowledges working 40 hours during a week in which s/he certified for benefits. The claimant reported his/her earnings, which were less than the weekly benefit amount, and a benefit amount less his earnings could be issued by the state agency. However, state law considers that an individual who works 32 hours or more during a week is employed full-time, not unemployed, and therefore, not entitled to unemployment benefits for the week. Because the claimant's circumstances are in disagreement with applicable state law, an Unemployment Status nonmonetary determination is issued and counted.

GUIDE SHEET 13 – UNEMPLOYMENT STATUS



HINT: *Since an Unemployment Status issue does not exist unless there is a disagreement, and the issue detection date is the date the state UI agency first became aware or should have become aware of the issue to which the nonmonetary determination applies, the issue detection date for Unemployment Status determinations in most instances is the date that the state UI agency first became aware or should have become aware the disagreement arose, since absent any disagreement, no issue exists.*

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WHAT TYPE OF INCOME DID THE CLAIMANT RECEIVE?

The type of income the claimant received or will receive (wages, remuneration), the amount received, and the period to which it is applicable, all must be recorded during the fact-finding process. This will help determine the week(s) affected and the deduction from the claimant's weekly benefit amount.

Determine the specific type of income received or considered to be constructively received by the claimant:

- Although not yet paid to the claimant by the employer (constructive receipt), a determination has to be made if the income meets the state law requirements for deductibility and/or disqualification for the weeks affected.
- The state UI agency must determine whether the income is based on employment or whether the income is from an employer's pension plan, disability plan, Social Security, etc., to establish the appropriate method for reducing the claimant's weekly benefit amount (WBA).
- The type of income determines the formula the state applies for reducing the claimant's WBA. In many states, if payment is less than the WBA (based on a percentage of earnings that is disregarded), the claimant receives the difference between the amount deducted (after the disregard) and the WBA. In others, a dollar-for-dollar reduction may apply, or no benefits are payable if the claimant receives disqualifying income regardless of the amount.

GUIDE SHEET 13 – UNEMPLOYMENT STATUS

B. WHAT IS THE GROSS AMOUNT OF INCOME THE CLAIMANT RECEIVED?

The gross amount of income received is used to determine its impact on the claimant's WBA - present, past, or future.

- Lump sum payments can represent different types of income.
- Lump sum payments may be applied only to the week in which the payment was received, or may be considered periodic payments, applying the prorated amount to several weeks.
-

It will be necessary to determine, based on the amount actually received, or in some cases "constructively received," the weeks to which the income is applicable and the amount of reduction required by state law.

- Obtain documentation or verification from the claimant and/or the employer of the gross amount of income.
- Once the sources are identified and the information is confirmed, a determination can be issued to wholly or partially reduce the claimant's benefit award in accordance with state law.



HINT: *Unemployment Status nonmonetary determinations that result from a disagreement regarding a claimant's wages differ from situations where the wages are not being disputed/contested. While situations where the claimant's receipt of wages may require an exploration of facts, where there is no disagreement about the outcome, i.e., the wages are uncontested, a reportable nonmonetary determination does not exist. Furthermore, in some instances when a disagreement does exist, circumstances may warrant completing and counting an Unemployment Status determination, and a Fraud Administrative Penalty determination to address the same week or weeks.*

GUIDE SHEET 14

SEASONALITY

GUIDE SHEET 14 - SEASONALITY

A seasonality issue exists when there is a question about whether or not, under special state statutory provisions, seasonal workers must be denied use of wages earned during a specified period of time. This issue must be resolved and a nonmonetary determination issued. State law must be examined to determine exactly what provisions apply. Usually the state has identified those employers in the state considered to have seasonal employment and the beginning and ending dates of the season for each employment type. Normally, the intent of the statute is to deny benefits based on seasonal employment when an employer is not operating because the season has ended. These provisions apply only when a claim is filed during the off season of that particular industry. Wages determined to be seasonal are removed from the claim for the periods between seasons.

Example: Jobs at a race track have been designated as seasonal employment. The race track season is February 1 to May 1. If a claimant who worked at the race track is unemployed during the season (February 1 to May 1), wages from the race track may be used in determining monetary eligibility; however, from May 2 to January 31 wages from the race track may not be used; these wages must be disregarded.

BASIC QUESTIONS AND FACTORS TO CONSIDER

A. WAS THE EMPLOYER DESIGNATED BY THE STATE UI AGENCY AS SEASONAL AND IF SO WHAT IS THE NORMAL SEASON FOR THE EMPLOYER?

Determine whether the employer or the type of employment has been defined by state law and/or policy as seasonal employment. Also determine if the claim is being filed during the normal season or off season. In general, seasonality provisions apply only when the claim for benefits is outside of the season.

B. WAS THE CLAIMANT EMPLOYED AS A SEASONAL WORKER?

The adjudicator must establish whether or not the claimant was employed as a seasonal worker. Determine whether the work performed by the claimant is seasonal in nature.

If the claimant performed services as a seasonal employee and is filing a claim during the off-season, the wages from the seasonal employment may not be used to establish monetary eligibility for any weeks that begin during the off season period. Beginning and ending dates of the season must be documented. Non-seasonal wages in the base period may be used to establish monetary eligibility.

GUIDE SHEET 15

**REMOVAL OF
DISQUALIFICATION**

GUIDE SHEET 15 - REMOVAL OF DISQUALIFICATION

The removal of a disqualification or a period of ineligibility is often a routine claims function requiring no determination. However, if there is “disagreement” concerning whether specific requalifying requirements have been met, a determination may be necessary. Similar to Unemployment Status nonmonetary determinations, there must be disagreement, which the adjudicator must address to have a valid, countable nonmonetary determination.

Example: The claimant has been disqualified from receipt of benefits. To remove the disqualification, s/he must return to work and earn at least \$2,000 (under state law) subsequent to the effective date of the disqualification. The claimant presents check stubs totaling \$1,800, which is insufficient to remove the disqualification. However, the claimant contends that he/she earned wages totaling \$2,300 but lost the check stubs. This situation creates a “disagreement” between the information presented and the claimant’s contention that sufficient wages were earned to remove the disqualification. The adjudicator must obtain additional information, and in this case the employer(s) must be contacted. After obtaining sufficient information, if a disagreement still exists, the adjudicator may resolve the issue and make a valid determination that is countable and reportable. However, if the disagreement no longer exists (e.g., the employer verifies that the claimant earned \$2,300), a determination is not needed, or counted, since the removal of a disqualification in the absence of a disagreement is a routine claims function requiring no determination.



HINT: *Since a Removal of Disqualification issue does not exist unless there is a disagreement, and the issue detection date is the date the state UI agency first became aware or should have become aware of the issue to which the nonmonetary determination applies, then, the issue detection date for Removal of Disqualification determinations is the date that the state UI agency first became aware or should have become aware that the disagreement arose, since no issue existed before any disagreement.*

BASIC QUESTIONS AND FACT FINDING FACTORS TO CONSIDER

A. DOCUMENTATION

The adjudicator must document the type of disqualification or ineligibility the claimant is attempting to remove or purge. The disagreement or controversy must be documented in the record. The record must include a rationale for the determination that was made (e.g., why did the adjudicator accept or reject information provided to remove the

GUIDE SHEET 15 - REMOVAL OF DISQUALIFICATION

disqualification or period of ineligibility?).

Any information obtained for consideration in removing or purging a disqualification or period of ineligibility must be documented. If a statement from a doctor or health care provider is required, the file must include the actual statement. If proof is required to establish that sufficient wages have been earned during a particular time period, the case file must contain the documented proof reflecting the source of the information. For example, in providing proof of earnings, the claimant may furnish pay stubs showing the gross amount of earnings and the period of time in which they were earned, a signed statement from an employer on company letterhead, or W-2 forms.

B. STATE POLICY CONSIDERATIONS

State policy will define what is acceptable as proof of wages.

CHAPTER VII
GLOSSARY

ADEQUATE: (1) Lawfully and reasonably sufficient for a specific requirement;.

BASIC FACTOR: A category of information which serves as a guide for fact-finding investigation. Basic factors are identified for each of the issue areas.

CASE MATERIAL: All documents necessary to conduct a complete review for nonmonetary determination quality. The case file, depending on the issue adjudicated, must contain, but is not limited to, a copy of:

1. Initial claim, if applicable
2. A separation notice, if applicable;
3. Employer response, if applicable:
4. The formal written determination, when required;
5. All fact-finding documentation, and other relevant documentation such as doctor's certificate, notice of refusal of suitable work or referral to work from either the Employment Service (ES) or an employer, pension information, alien verification documentation from USCIS, etc.; and
6. Printout of claim history record.

CLAIMANT INFORMATION (FACTS): All information obtained from the claimant in the fact-finding process.

CONCLUSION: The statement(s) in the written determination that explain in legal terms the basis for the determination.

DATA VALIDATION: Verification of the state UI agency's compliance with Federal definitions and reporting requirements. The same sample that is drawn for evaluating nonmonetary determination quality is also used to check the validity of the data reported by the state UI agency to the National Office in

accordance with Federally-prescribed requirements.

DATE OF DETERMINATION: The date on the determination notice, or, if no notice is required, the date payment is authorized, waiting week credit is given, or an offset is applied.

DETERMINING FACTOR: Factor which is the KEY or TURNING POINT of the case and forms the basis on which benefits are determined to be allowed or denied.

EMPLOYER INFORMATION: All information obtained from the employer in the fact-finding process.

EVIDENCE: Whatever is presented in an attempt to establish an alleged fact.

FACT: Something that has been determined, as a result of weighing evidence, to be an accurate description of what occurred.

FACT-FINDING REPORT: All of the documents in a case record including all of the claimant's statements, all of the employer's statements, and any other information such as claim record cards, physicians' statements, referral notices, letters, and other related documents.

FACTS FROM OTHERS: Information from sources other than the claimant or the employer, i.e., physicians, union officials, local U.I. office and Employment Service personnel or records, or any other party who has knowledge pertaining to a case.

FORMAL DETERMINATION: A nonmonetary determination where a written determination is made and is sent either to the employer or claimant or both.

GOVERNMENT PENSIONS: Annuities received as a result of employment with a state or the Federal government, including for military service, from the Social Security program, or from Railroad Retirement.

INADEQUATE: Not of sufficient completeness to meet a specific requirement.

INFERRED INFORMATION: Information regarding an element which, although not stated in the fact-finding report, can be inferred from existing, documented information or can be inferred to exist because the information in question is common knowledge.

INFORMAL DETERMINATION: A nonmonetary determination that is not required to be formally written and provided to the interested parties. The case file must include the same information as a formal written determination with the exception of the appeals rights.

ISSUE: An act, circumstance or condition potentially disqualifying under state/federal law.

ISSUE DETECTION DATE: The earliest date that the agency, including organizational units such as BAM and BPC, is in possession of information indicating the existence of a nonmonetary issue.

LABOR DISPUTE: A nonseparation issue pertaining to the unemployment of more than one claimant as a result of controversy about terms or conditions of employment.

MATERIAL FACT(S): A fact that is essential, required, and of consequence to the determination of action. For example, in a termination for excessive absenteeism, the employee's attendance history is material to the issue. (Also see Necessary Information/Facts.)

NECESSARY INFORMATION/FACTS: That which cannot be dispensed with; essential; mandatory; required. (Also see Material Facts.)

NONMONETARY DETERMINATION: A decision made by the initial authority based on facts related to an "issue" detected: (1) which had the potential to affect the claimant's past, present, or future benefit rights, and (2) for which a determination of eligibility was made.

NONMONETARY DETERMINATIONS TIME LAPSE: The number of days from the date an issue is first detected on a claim to the date on the determination.

PROGRAM TYPES: Classification of a new initial claim based on the claimant's covered base period wages and employment.

UC: = A state program that provides benefits to individuals financed (1) wholly from state trust funds (UI) or (2) partially from state trust funds and partially from UCFE and/or UCX program funds (joint UI/UCFE, UI/UCX, UI/UCFE/UCX claim).

UCFE: = claim based wholly on Federal civilian service or partially on Federal civilian service and partially on Federal military service (UCFE/UCX).

UCX: = claim based wholly on Federal military service (UCX only).

QUESTIONABLE: The dictionary defines the word "questionable" as: (1) inviting inquiry; (2) liable to judicial inquiry or action; (3) affording reason for being doubted or challenged, not certain or exact; or, (4) attended by well-grounded suspicions of being immoral, crude, false, or unsound. If the case is scored inadequate under "Claimant Information," "Employer Information," or "Information (Facts) From Others" because necessary facts are missing, obviously Law and Policy must be scored "Questionable."

REASONABLE ATTEMPTS: (See Page V-10)

REASONING: The rationale for the conclusions drawn and the action taken. The reasoning explains why the adjudicator made the determination as he/she did. When contradictions exist in the evidence, the reasoning must explain why one set of data was accepted rather than another.

REBUTTAL: The presentation of facts or arguments to overcome a factually established presumption for a finding of eligibility or ineligibility.

STANDARD EMPLOYMENT PRACTICE: A condition of employment which is common knowledge or generally accepted behavior which does not have to be specifically defined. For example, employees are expected to report to work on time, call in if absent, etc. Employees are expected not to steal from their employers, not to report to work drunk, etc. Employers are expected to assign work fairly and treat their employees in a professional manner. Employers are expected not to compel employees to perform illegal acts.

APPENDIX A
SAMPLE SELECTION

APPENDIX A

Sample Selection

Appendix A explains the procedures for selecting the samples for nonmonetary determinations review. Explanations of options have been included; each state must select the option best suited to their particular operation. The option preferred by the National Office (NO) will be indicated with reasons for the recommendation.

WHAT DOES SAMPLING REQUIRE?

The sampling methodology for nonmonetary determinations contains five distinct steps.

- 1) Identify, find, or gather data elements for sampling the universe files;**
- 2) Extract or collect data to create the universe files;**
- 3) Determine which transactions to select for the sample;**
- 4) Select the cases to review;**
- 5) Create output reports and files of the selected cases.**

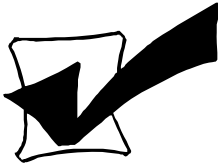
How these five steps are accomplished is the state UI agency's choice. Not all states have the same level of automation, and varying file structures may lend themselves to different sampling approaches.

Step 1 - Gather Data for the Sampling the Universe

Collect Required Data



The first step is to gather or have access to the universe (ALL of the particular transactions to be reviewed). It is essential that every transaction or item meeting the criteria be included. This means that all possible sources or locations of the transactions must be searched. For example, since nonmonetary determinations generated in various units such as BPC and BAM (formerly BQC) are included by definition, check to be certain they will all be included in the universe.



Be sure to check that only valid reportable transactions are included. Refer to the definitions in the UI Reports ETA Handbook No. 401, ET 207 report, and in Chapter V of this Handbook to determine which records should be included.

For instance, determinations which are generated for the sole purpose of establishing an overpayment amount are not valid in terms of the definitions.

The state UI agency IT staff is responsible for creating the universe files which contain the requested information. The NO has developed specifications of the minimum data needed for each sampling of the universe. The state UI agency IT staff is responsible for creating the programs and/or utilities to extract or gather the requested data elements.

Each sample being reviewed will be selected from a universe that includes the nonmonetary determinations dated within the three months in the preceding quarter, which is referred to as the review quarter. The date the determination was issued determines in which quarter's universe that record will be included.

Schedule Data Capture

In building the universe files, nonmonetary determinations must be captured as they occur.

This is important as the desired transaction may be superseded by a subsequent transaction and the desired information may no longer be readily available. This may be especially true in highly automated states where data fields are often overlaid with the most recent information. Some states may be able to reconstruct events by using

daily transaction logs maintained in their data processing environment. It is still better to capture the transactions as they occur during the time period to be reviewed.



HINT: *Once the elements for the universe files have been identified and the extraction program created, the BTQ reviewer must examine a small cross section of the records to verify that the data elements are correct and the proper time frames are being followed.*

After the BTQ reviewer has approved the data elements and time frame, the state UI agency IT staff should establish procedures for building the universe files, selecting the sample cases and saving the universe files.

Step 2 - Collect Data to Create the Universe

Data Collection

The state UI agency IT staff must create a file of the transactions that make up the universe. The state UI agency can either write a program to create the universe file or use commercial software. The resulting transaction files can then be used as input into a sample selection program such as PICKNMBR, which is described later in the appendix.

Save the universe Files

States MUST save the universe files from which samples are selected for one year for data validation purposes.

Step 3 - Determine Records for the Sample

Perform Calculations

The third step is to determine which records to select for the sample. The formulas used to determine which records to select must be the formulas provided by the NO, or alternative formulas approved by the NO.

To perform the calculations using the interval sampling methods described below, three numbers are needed:

1. **Total Records in the universe.** Once the universe has been created, a count of all the transactions in the universe must be performed. This count is represented by "P" in the calculations.
2. **Number of Records to Sample.** The number of cases to sample for nonmonetary determinations depends on the total number of nonmonetary determinations reported by the state on the ETA 9052, Nonmonetary Determinations Time Lapse Report, in the preceding calendar year. States reporting 100,000 or more nonmonetary determinations will sample 50 separation issues and 50 non-separation issues each quarter for quality review. States reporting fewer than 100,000 determinations in the preceding calendar year will sample 30 separation issues and 30 nonseparation issues each quarter for quality review. States may sample larger numbers if they choose, but all of the determinations sampled must be reviewed and entered into the database in order to preserve the validity of the sample. Before running the sampling routine, the universe of nonmonetary determinations must be sorted by separation issues and nonseparation issues so that an independent sample can be drawn from each.
3. **Random Number.** This is the third critical number necessary to perform the sample calculations. It is represented as "R" in the formulas. Random numbers are distributed by the NO for each calendar year, may be generated on the state's IT system, or may be obtained from any statistics manual.

FORMULAS TO IDENTIFY RECORDS FOR QUALITY SAMPLES

The following are the steps needed to determine which records to select for the sample. These steps must be repeated for each sample that will be selected.

- **A count of the total number of transactions in the universe must be performed.** The state UI agency IT staff can supply this number. This number is represented by "P" in the calculations. Note that for nonmonetary determinations, a sort must be performed to divide the transactions file into its component universes of separation issues and nonseparation issues before proceeding.
- **Determine the number of cases to sample.** Based on the number of nonmonetary determinations reported by the state in the previous calendar year, determine the number of cases to sample for each. The letter "N" represents sample size in the calculations.

- **Obtain a Random Number.** In the calculations, "R" represents the random number, which can be obtained from the NO, from a statistics handbook, or from the IT system. The random number must be a decimal between 0 and 1 and must be at least three digits (for example, .729). For states with large universes, the random number must contain four digits, if the sampling interval is likely to be greater than 1,000.

After the above mentioned numbers are identified, several calculations must be performed.

Balanced Systematic Sampling

CALCULATIONS

First, determine the sampling interval k , by dividing the sample size into the universe size. If the result of this calculation is not a whole number, round the result to the nearest integer.

$$k = \frac{P}{n} \text{ (round to the nearest integer)}$$

Second, determine the starting point i within the universe. This is accomplished by multiplying the sampling interval k by the random number r and rounding to the nearest integer.

$$i = rk \text{ (round to the nearest integer)}$$

Next, select n cases. This is accomplished by selecting pairs of cases j until all the cases have been identified. First, the number of pairs must be determined by:

If n is even, $j = 0, 1, 2, \dots, \left(\frac{n}{2} - 1\right)$

If n is odd, $j = 0, 1, 2, \dots, \left(\frac{n-1}{2} - 1\right)$ **is used to calculate $n - 1$ cases and the remaining case is calculated separately as indicated next.**

Once the number of pairs is determined, the cases are selected by using the following formulas:

$$i + jk \text{ and } (P - jk) - i + 1$$

In addition when n is odd, the remaining case is calculated by:

$$i + \frac{n-1}{2}k$$

CALCULATIONS EXAMPLES

Example 1: Let $P = 43$, $n = 5$, $r = .261$.

First, determine the sampling interval:

$$k = \frac{43}{5} = 8.6 \approx 9 \text{ (rounded)}$$

Second, determine the starting point:

$$i = (.261)(9) = 2.349 \approx 2 \text{ (rounded)}$$

Next, since $n = 5$ is odd, use the formula $j = 0, 1, 2, \dots, \left(\frac{n-1}{2} - 1\right)$ to determine the pairs of records that you need to inspect:

$$\text{Since } \frac{n-1}{2} - 1 = \frac{5-1}{2} - 1 = 1, \text{ then } j = 0, 1.$$

Now calculate the pair of records you need to select by using the formulas $i + jk$ and $(P - jk) - i + 1$ as follows:

	$i + jk$	$(P - jk) - i + 1$
when $j = 0$	$2 + (0)(9) = 2$	$(43 - (0)(9)) - 2 + 1 = 42$
when $j = 1$	$2 + (1)(9) = 11$	$(43 - (1)(9)) - 2 + 1 = 33$

Since n is odd, you will need to calculate the remaining case by:

$$i + \frac{n-1}{2}k = 2 + \frac{5-1}{2}(9) = 20$$

Therefore, you will select the following five records for the sample:

2, 11, 20, 33, and 42.

Example 2: Let $P = 244$, $n = 10$, $r = .743$

First, determine the sampling interval:

$$k = \frac{244}{10} = 24.4 \approx 24 \text{ (rounded)}$$

Second, determine the starting point:

$$i = (.743)(24) = 17.832 \approx 18 \text{ (rounded)}$$

Next, since $n = 10$ is even, use the formula $j = 0, 1, 2, \dots, \left(\frac{n}{2} - 1\right)$ to determine the number of pairs that you need to inspect.

$$\text{Since } \frac{n}{2} - 1 = \frac{10}{2} - 1 = 4, \text{ then } j = 0, 1, 2, 3, 4.$$

Now calculate the pair of records you need to select by using the formulas $i + jk$ and $(P - jk) - i + 1$ as follows:

	$i + jk$	$(P - jk) - i + 1$
when $j = 0$	$18 + (0)(24) = 18$	$(244 - (0)(24)) - 18 + 1 = 227$
when $j = 1$	$18 + (1)(24) = 42$	$(244 - (1)(24)) - 18 + 1 = 203$
when $j = 2$	$18 + (2)(24) = 66$	$(244 - (2)(24)) - 18 + 1 = 179$
when $j = 3$	$18 + (3)(24) = 90$	$(244 - (3)(24)) - 18 + 1 = 155$
when $j = 4$	$18 + (4)(24) = 114$	$(244 - (4)(24)) - 18 + 1 = 131$

Therefore, you will select the following 10 records for the sample:

$$18, 42, 66, 90, 114, 131, 155, 179, 203, 227.$$

Systematic Sampling

Under certain circumstances, balanced systematic sampling can result in the selection of duplicate sample cases, especially if the population is small. To avoid duplicates, systematic sampling can be used as an alternative selection method.

First, a skip interval is computed by dividing the number of records in the sampling frame P by the number of records to be sampled n . The first sample case selected is determined by multiplying the skip interval by the random start number r , which is obtained as described for *balanced systematic sampling*. The product of the skip interval and the random start number is rounded to the nearest integer. If the rounded integer is zero, the case corresponding to the rounded skip interval is selected as the first case in the sample.

CALCULATIONS EXAMPLES

Number of Records in the Sampling Frame $P = 118$
 Random Start Number $r = .261$.

Total Number of Cases to be Sampled $n = 20$.

Skip interval $k = \frac{118}{20} = 5.9$

Initial case selected $i = (.261)(5.9) = 1.54 \approx 2$ (rounded)

Record 2 in the sampling frame is the first record selected for the sample. Subsequent cases are selected using systematic sampling.

1. Select the initial sample case as described above.
2. Select the next $n - 1$ cases by adding multiples of the skip interval k rounded to the nearest integer, to the case number of the initial selection $i : i + \text{round}(jk)$, where $j = 1, 2, 3, \dots, (n - 1)$.

In the example, cases 2, 8, 14, 20, 26, 32, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 96, 102, 108, and 114 will be selected from the sampling frame of 118 records.

If the last case designated for selection by the sampling algorithm is greater than the size of the sampling frame P , the case will be selected from the beginning of the sampling frame. That is, the sampling frame will be considered to be circular. For example, if the last case selected is $P + 1$, the 1st case in the sampling frame will be selected.

The general rule is:

if $(i + \text{round}(jk)) > P$, select case H , where $H = (i + \text{round}(jk)) - P$ and $1 \leq H \leq i$.

Other Automated Approach

The state UI agency may choose to use another automated method of identifying which records will constitute the sample. However, it is imperative that the formulas described on the previous pages or an alternative method approved by the NO be used to ensure that the sample selection is non-biased.

Steps 4 & 5 - Select Cases and Create Sample Files

The last steps of the sampling process involve the creation of files containing the selected sample cases. These steps use the universe file from step two and the calculated record numbers from step three to create the sample file. The calculated record numbers from step three identify which records from the universe file will constitute this file.

The sample case file must contain, at a minimum, the skeleton fields identified in ET Handbook 402, plus the claimant's social security number.

The PICKNMBR program can be used for every sample process. The calculations performed by this program are designed to ensure a non-biased systematic sample. This program is not dependent on the method used to select sample cases.

Two programs were developed by the Department for the TPS samples: PICKNMBR and SAMPSOonn. The TPS SAMPSOonn programs, specifically the TPS Status Determination sample selection program, can serve as a general model for the development of a sample selection program specific to the Benefits Quality program. It would require extensive modifications for use in selecting nonmonetary determinations or lower authority appeals samples. States are discouraged from undertaking this task.

The PICKNMBR program can be used if the universe is:

- not stored using the NO format; or if
- kept as transactions occur.

PICKNMBR Processing – The narrative below describes the processing steps that are performed in the PICKNMBR program. These processing steps are also illustrated in the flowchart format.

- 0000-DRIVER-ROUTINE – this section is the main routine for the program. This routine calls all of the other routines.
- 0010-LISTING-HEADING; 0020-LISTING-HEADING – these sections control printing of the report page and column header information, line count, and page advancement
- 0011-CS011, 0031-CS031, 0041-CS041, 0042-CS042, 0043-CS043, 0051-CS051, 0061-CS061 – these sections identify lower authority appeals and corresponding year/quarter fields for the activity being processed.
- 0100-OPEN-ROUTINE – this section opens the input file CNTRL-DATA, and output files SELECT-NUMBERS, PICKNUM-LIST and reads the CNTRL-DATA file.
- 0110-CNTL-OPTION – this section determines which function is being processed.
- 0120-CNTL-ERROR – this section validates the three CNTRL-DATA file fields CNTRL-RANDOM-ALF, TRANS-REC-CNTRL-ALF, and SAMPLED-

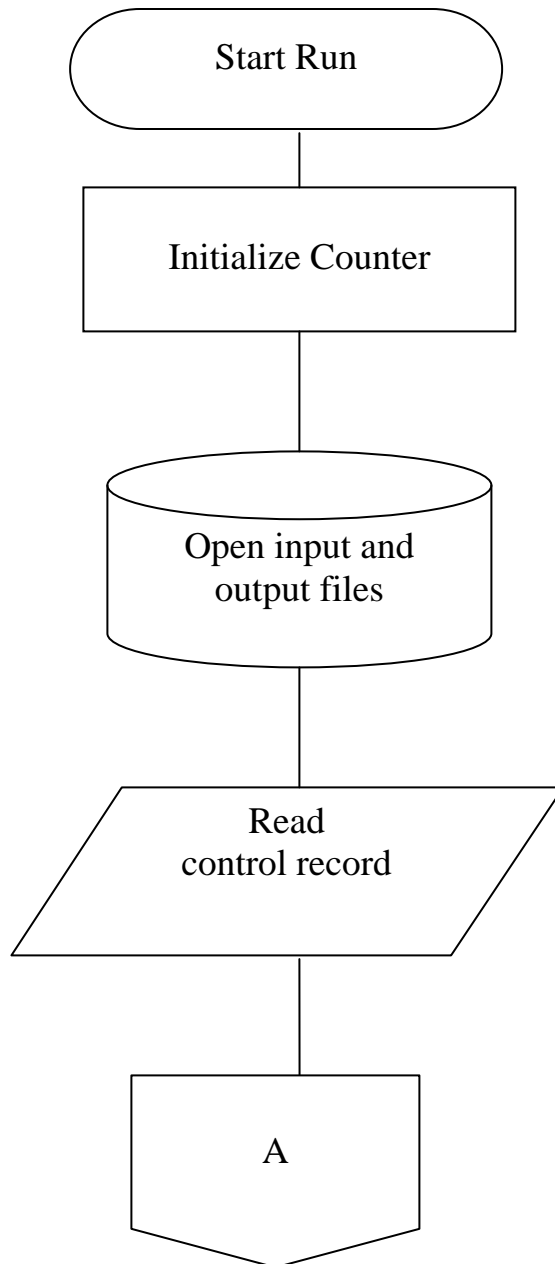
NMBR for non-numeric values. These fields must be numeric for the program to execute. To assist in the validation, a STOP-FLAG field is incremented by a certain amount. As a result, a comparison is made between the incremented STOP-FLAG and a value in the range 0 through 7. Within this range, different error messages will be displayed depending upon the error detected, and then the program is terminated.

- 0130-FIPS-TABLE – this section searches SESA-ID in the FIPS table to find the exact state name associated with its abbreviation.
- 0140-SPL-TABLE – this section searches the SAMPLE-TYPE field of the CNTRL-DATA file for a corresponding match in the sample table (SPL-TYPE-DATA). If a match occurs, the sample type abbreviation is replaced by the exact sample type description to be utilized in the output report formats.
- 0200-CALC-SKIP-INTERVAL – this section calculates the SKIP-INTERVAL (K) utilizing the following $K=P/N$. P: the total number of records, N: sample size.
- 0300-INITIAL-CASE – this section calculates the initial sample case number (I). It is determined by truncating the result of $I = R * K + 0.5$. The INITIAL-CASE field (I) is defined as a 5-position numeric integer. The right side of the equation $I = R * K + 0.5$ yields a real number, thus allowing (I) to truncate the result of the calculation. R: CNTRL-RANDOM-ALF, and K: SKIP-INTERVAL.
- 0310-CHECK-ODD-EVEN – this section determines whether the number of records (N) to be selected for the sample (SAMPLED-NMBR) is either odd or even. If (N) is odd, the 0320-ODD-RTN procedure is executed.
- 0320-ODD-RTN – this routine calculates the additional number that was described in the random function formula. The equation is as follows: $ONE-MORE-REC = I + \frac{1}{2} (N - 1) * K$.
- 0330-CREATE-REC – this routine writes the calculated record numbers to an output data file (SELECT-NUMBERS) and an output print file (PICKNUM-LIST). A record counter (MATCH-CNTR) is incremented by one each time a record is added to the files.
- 0400-REMAINING-NUMBER – this section performs the calculations to determine the remaining numbers for the sample. As the balanced systematic sample of the random function formula, if N is even, N/2 pairs of records are selected. If N is odd, the iteration number is as follows: 0, 1, 2, $\frac{1}{2} (N - 1) - 1$ and $\frac{1}{2} (N - 1) - 1$ pairs of records are selected.
- 0500-CALC-SKIPINTERVAL – this section will calculate the SKIP-

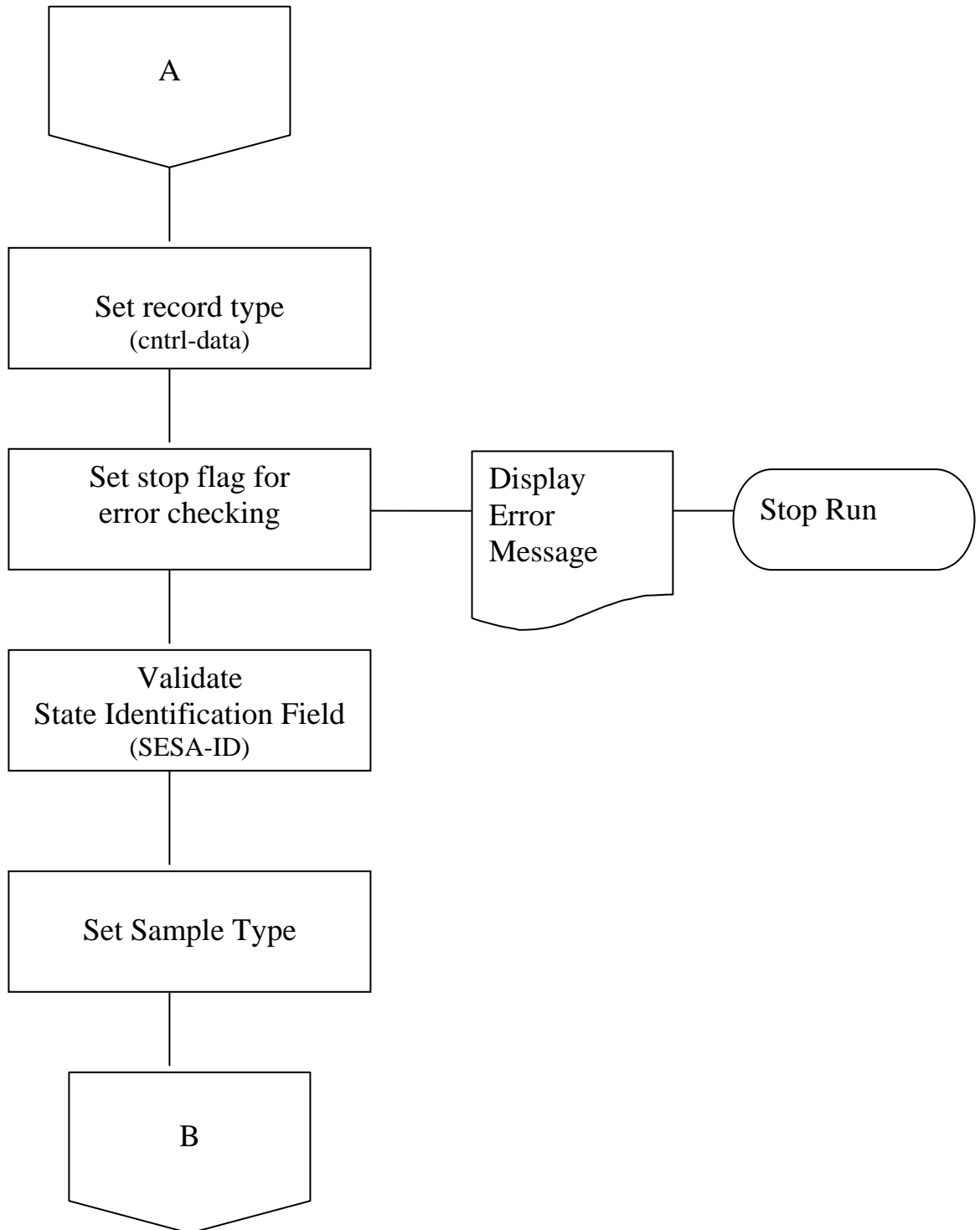
INTERVAL-B for a transaction sample size less than 200 using the equation $K = P/N$ (K not rounded).

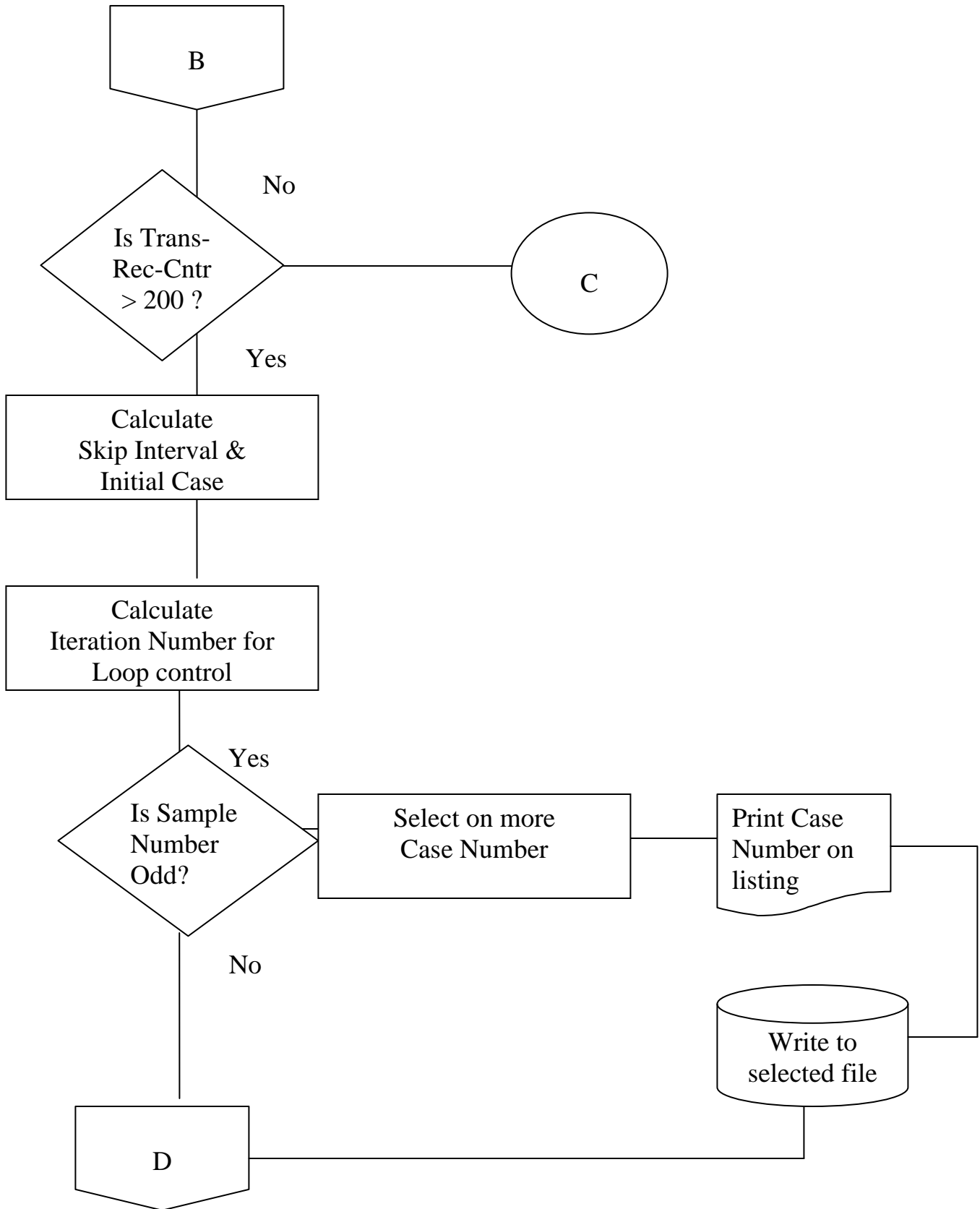
- 0600-CALC-INITIAL-CASE – this section calculates the initial sample case number (I) for transaction sample size less than 200. It is determined by truncating the result of $I = R * K + 0.5$.
- 0700-SELECTED-NUMBERS – this section performs the calculations to determine the numbers to select for the sample. This procedure is based on the transaction sample size being less than 200. The second record is calculated by adding the skip interval (not rounded) to the initial case (truncated) and rounding the result. The remaining numbers are calculated by adding the skip interval to the previous (not rounded) number and then rounding the result. This process is continued until all the records have been calculated.
- 0800-CHK-SPL-NBR – this section verifies that the number of records written to the SELECT-NUMBERS files equals the number of records to be sampled (SAMPLED-NMBR) in the CNTRL-DATA file. If these fields are not equal, the error message is displayed.
- 0900-TRAILER-LIST – this section prints the information that was used to perform the calculations and select the record numbers.
- 9999-CLOSE-FILE – this section closes the files CNTRL-DATA, SELECTED-NUMBERS, and PICKNUM-LIST.

PICKNMBR

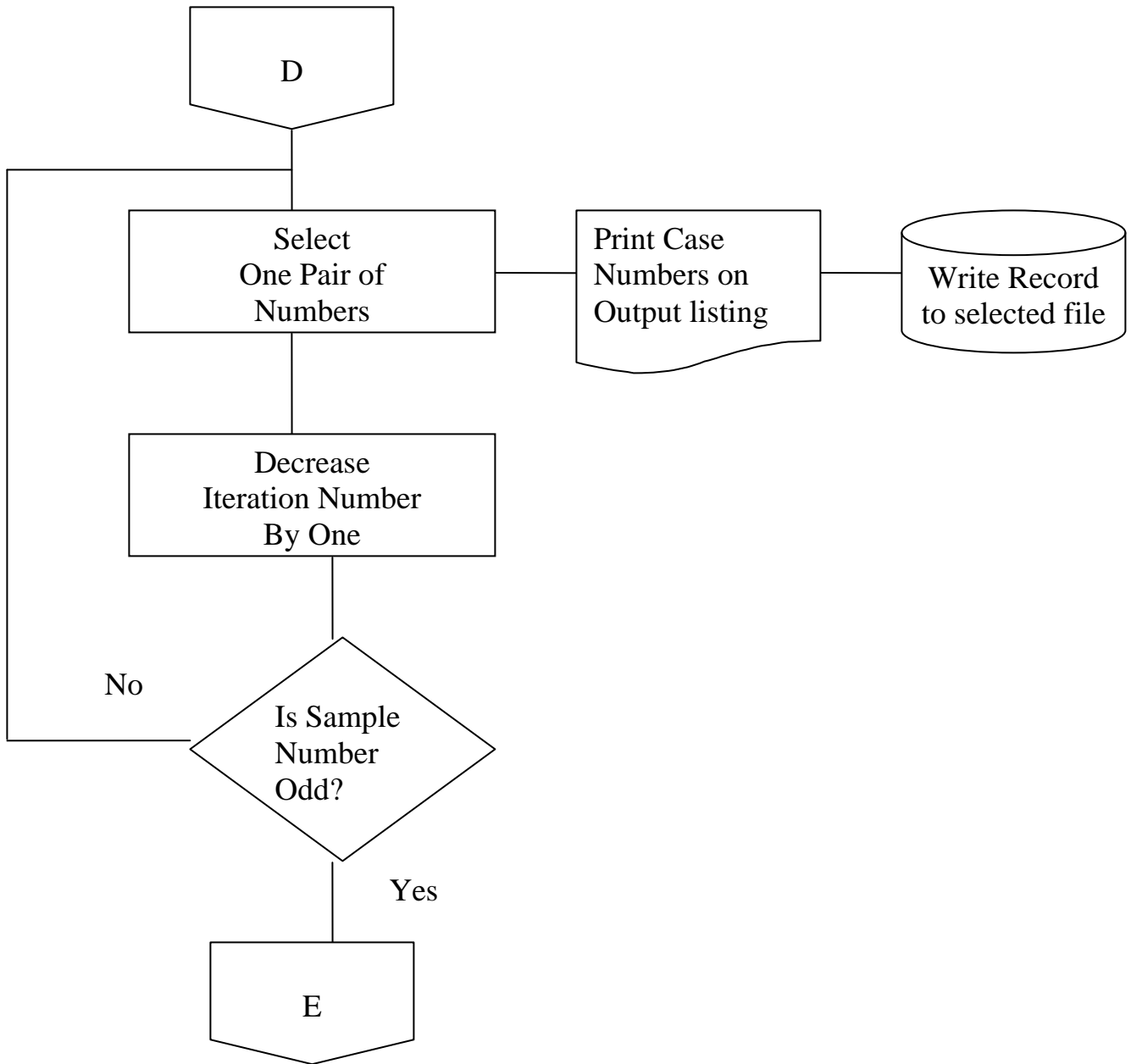


PICKNMBR

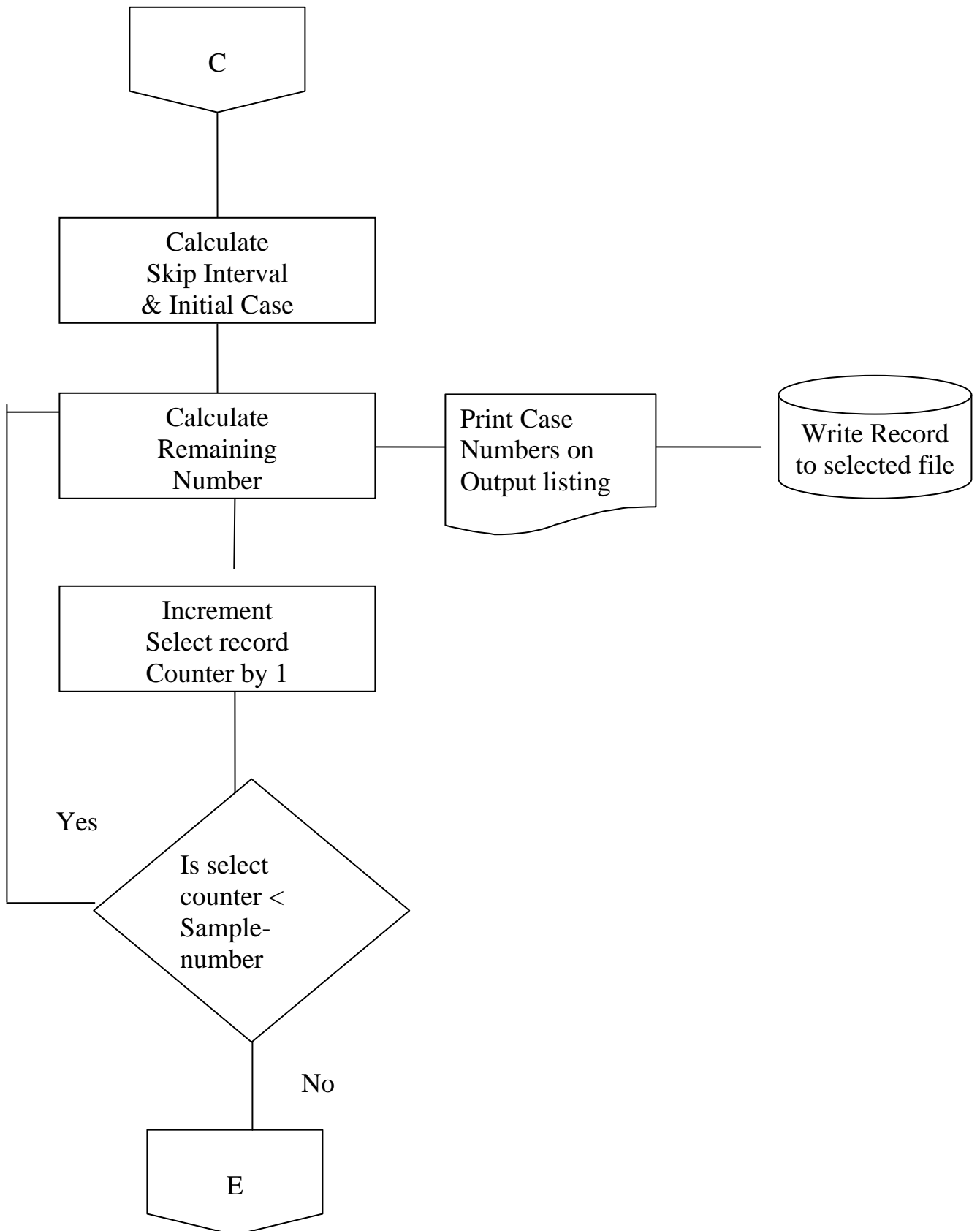




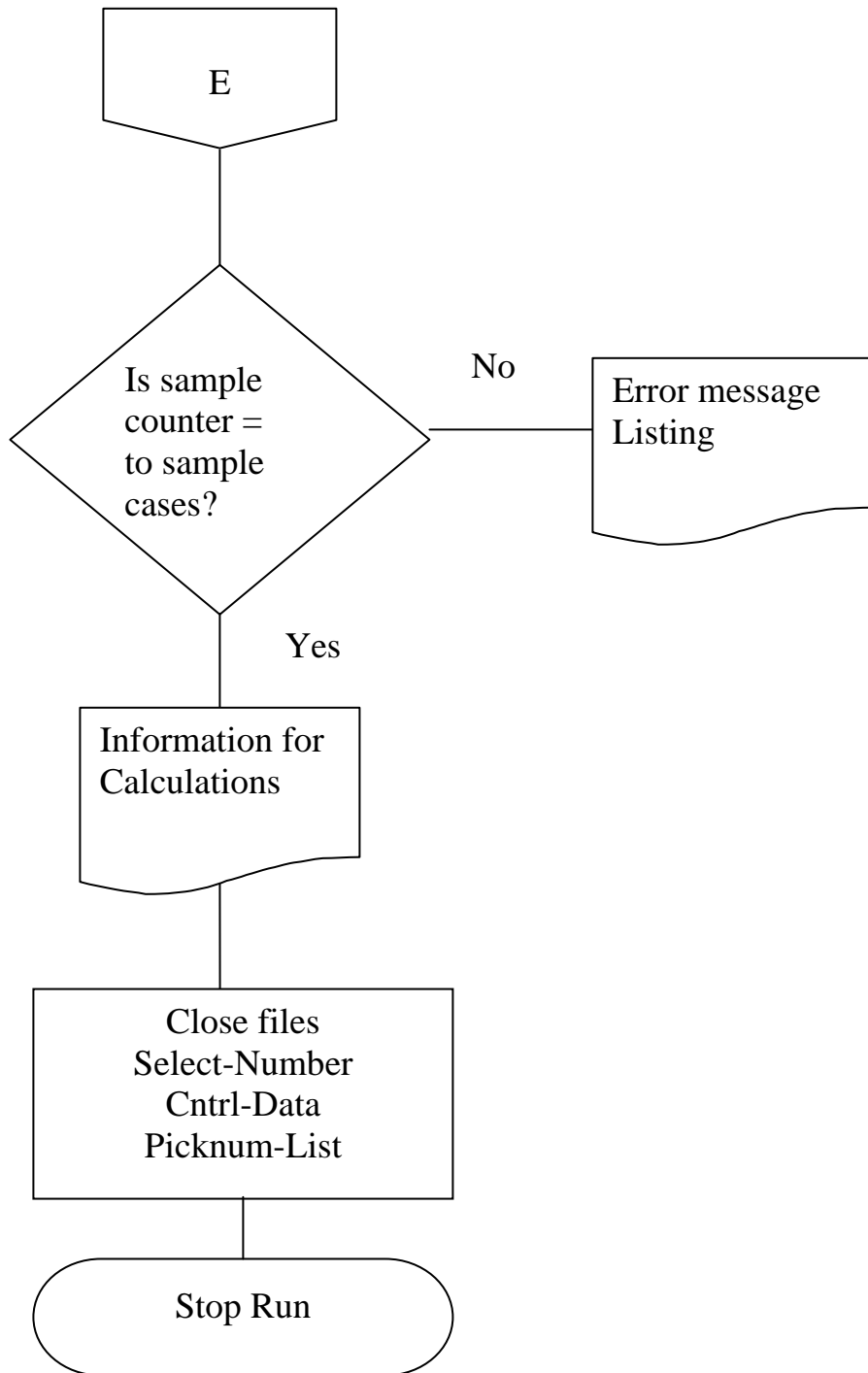
PICKNMBR



PICKNMBR



PICKNMBR



APPENDIX B

EMPLOYMENT SECURITY MANUAL PART V SECTION 6013

Appendix B

Claim Determination Standards Designed to Meet Department of Labor Criteria

For ease of reference, the following is an excerpt from the Employment Security Manual (ESM), Part 5, Section 6013:

A. ***Investigation of claims.*** *The state UI agency is required to obtain promptly and before a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.*

This requirement embraces five separate elements:

- 1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility cannot be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.*
- 2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.*
- 3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with UC law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.*
- 4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.*

5. *If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.*

B. **Recording of facts.** *The agency must keep a written record of the facts considered in reaching its determinations.*

C. **Determination notices**

1. *The agency must give each claimant a written notice of:*

a. *Any monetary determination with respect to his benefit year;*

b. *Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing.*

c. *Any other determination which adversely affects² his rights to benefits, except that written notice of determination need not to be given with respect to:*

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part of earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2 f (1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

²A determination "adversely affects" claimant's rights to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits or purging a disqualification; or (5) determines that an overpayment has been made or orders a recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in other ways denies claimant a right to benefits under the State law.

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2 f (2) and 2 h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefore, and their rights to protest, request reconsideration, or appeal. The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

*a. **Base period wages.** The statement concerning base-period wages must be in sufficient detail to show the basis of computation of*

eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. **Employer name.** The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it's correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. **Explanation of benefit formula - - weekly and maximum benefit amounts.** Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependants, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reasons of ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet must be given to each claimant at or before the time he receives written notice of a monetary determination.

d. **Benefit year.** An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. **Information as to benefits for partial unemployment.** There must be included either in the written notice of determination or in a booklet or pamphlet an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered must be made.

f. **Deductions from weekly benefits.**

(1) **Earnings**. Although written determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to able the claimant to verify the accuracy of the deduction, and his right to protest, request determination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings insufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may not obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) **Other deductions**.

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from the

claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2) (a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions that can be made under State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may not obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. Seasonality factors.

If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. Disqualification or ineligibility. *If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and*

what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

*i. **Appeal rights.** The claimant must be given information with respect to his appeal rights.*

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as non-workdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to so much material if it said, for example, " For other information about your (appeal), (protest), (redetermination) rights, see pages _____ to _____ of the _____ (name of pamphlet or booklet) heretofore furnished to you."

NONMONETARY DETERMINATIONS QUALITY DATA COLLECTION INSTRUMENT

	1. IDENTIFICATION # 00000 (5-digit sample sequence) (skeleton field)		
	2. ISSUE CODE (2-digit code) (skeleton field)		
	3. CASE MATERIAL FOUND? (Y/N) (If "N", remaining elements are left blank)		
	4. DATE ON DETERMINATION: (mmddyyyy) (skeleton field)		
	5. CORRECT DATE ON DETERMINATION? (Y/N)		
	6. CORRECTED DATE ON DETERMINATION: (mmddyyyy)		
	7. CORRECT ISSUE CODE? (Y/N) (If "Y", then item 8 is blank)		
	8. IF ITEM 7 IS "N", ENTER THE CORRECT CODE FROM BELOW. (If no issue existed, enter "00"; if a nonmonetary redetermination, enter "01")		
	SEPARATION	NON-SEPARATIONS	MULTI-CLAIMANT
	10 Quit 20 Discharge (MC)	30 Able/Available 31 Reporting Requirements 40 Work Search 50 Disq/Ded. Income 60 Refusal of Work; Failure to Apply/Accept Referral 70 JS Registration 73 Profiling	80 School Employee 81 Alien 82 Athlete 83 Unemployment Status 84 Seasonality 85 Removal of DQ 86 Fraud Administrative Penalty 90 Labor Dispute 99 Multi-Claimant (Other)
	9. INTRASTATE CLAIM? (Y/N)		
	10. PROGRAM TYPE: UI UCFE UCX		
	11. NONMONETARY DETERMINATION OUTCOME: <u>A</u> LLOWED <u>D</u> ENIED		
	12. OUTCOME REPORTED CORRECTLY? (Y/N)		
	13. STATE UI AGENCY USE ONLY		
	14. ISSUE DETECTION DATE: (mmddyyyy)		
	15. CORRECT ISSUE DETECTION DATE? (Y/N)		
	16. CORRECTED ISSUE DETECTION DATE (blank if item 18 is "Y"): (mmddyyyy)		
	17. CLAIMANT INFORMATION: <u>A</u> dequate=15, <u>I</u> nadequate=10, <u>N</u> ot Obtained=0		
	18. EMPLOYER INFORMATION: <u>A</u> dequate=15, <u>I</u> nadequate=10, <u>N</u> ot Obtained=0, NA(<u>X</u>)=15		
	19. INFO/FACTS FROM OTHERS: <u>A</u> dequate=15, <u>I</u> nadequate=10, <u>N</u> ot Obtained=0, NA(<u>X</u>)=15		
	20. LAW/POLICY: <u>M</u> eets=45, <u>Q</u> uestionable=30, Does not meet (<u>W</u>)=0		
	21. WRITTEN DETERMINATION: <u>A</u> dequate=10, <u>I</u> nadequate=5, <u>W</u> rong (W)=0 (If " <u>W</u> " then #23 cannot be " <u>M</u> ")		

COMMENTS**

Claimant Information	Adequate/15	Inadequate/10	Not Obtained/0	Not Applicable/15
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Comments:

Employer Information	Adequate/15	Inadequate/10	Not Obtained/0	Not Applicable/15
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Comments:

Facts From Others	Adequate/15	Inadequate/10	Not Obtained/0	Not Applicable/15
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Comments:

Law & Policy	Meets/45	Questionable/30	Does Not Meet/0
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Comments:

Written Determination	Adequate/10	Inadequate/5	Wrong/0
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Comments:

Total _____

Comments on Other Elements

**Entering scores on the comment page is optional.