

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE July 16, 2014

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 18-14

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Fiscal Year 2014 Unemployment Insurance Worker Misclassification
Prevention and Detection Supplemental Funding Opportunity

- Purpose.** To notify states of a supplemental funding opportunity involving fiscal year (FY) 2014 unemployment insurance (UI) State Administration funds to address worker misclassification within the federal-state UI program and to provide guidance on how states can submit funding requests.
- References.**
 - Consolidated Appropriations Act, 2014 (Public Law 113-76);
 - Employment and Training (ET) Handbook No. 401, 4th Edition, Unemployment Insurance Reports; and
 - Unemployment Insurance Program Letter (UIPL) No. 3-11, Implementation of the Effective Audit Measure.
- Background.** The Consolidated Appropriations Act of 2014 authorizes grants to states for the administration of the state UI laws, including \$10,000,000 for “activities to address the misclassification of workers.” Worker misclassification occurs when an employee is erroneously classified by an employer as an independent contractor, or not classified at all and become part of the underground economy. Both of these actions reduce UI tax revenue and adversely affect an employee’s ability to receive UI benefits, worker’s compensation, Social Security benefits, health insurance coverage, retirement coverage, and protection under the Fair Labor Standards Act. These actions are also unfair to employers who abide by the law and properly classify their employees. The Employment and Training Administration (ETA) is committed to developing UI tax-related systems and tools focused on the prevention and detection of worker misclassification.

The FY 2014 appropriation identifies \$10 million for two initiatives focused on increasing capacity to address worker misclassification. ETA’s Office of Unemployment Insurance (OUI) will make \$8 million in competitive grants available to states to increase their capacity for preventing and detecting worker misclassification and enforcing their state UI laws and policies. OUI will also award \$2 million to states that have demonstrated a high level of

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performance or significant improvement in detecting and prosecuting employers who fail to pay their fair share of taxes due to worker misclassification.

4. **Use of Funds.** Examples of appropriate proposals for states to increase their capacity for preventing and detecting worker misclassification include:
 - Improving systems that will enable them to share and analyze data from Federal and state agencies that will enhance identifying employers more likely to misclassify employees;
 - Implementing targeted audit strategies to focus on those employers most likely to misclassify workers;
 - Establishing a state-wide task force to target egregious worker misclassification schemes; and
 - Developing education and outreach programs for employers to help prevent misclassification.

5. **Application, Award, and Expenditure of Supplemental Funds.** An individual state may request up to \$500,000 for misclassification prevention, detection, and enforcement projects. If the projected cost of the project exceeds \$500,000, the state must commit to completing the project without additional Federal funds. If the amount of funds approved for all states is less than the total amount available, ETA may make awards greater than the initial maximum amount of \$500,000, or a second solicitation could be issued.

ETA will use the attached Supplemental Budget Request (SBR) Outline to evaluate proposals. Each element should be addressed succinctly and provide the specific information requested. Applicants should describe proposed expenditures to explain and justify the request. States must submit a proposal outlining the project along with Standard Forms (SF)-424 (Application for Federal Assistance) and form SF-424A (Budget Information – Non-Construction Programs).

Proposals, along with forms SF-424 and SF-424A, must be submitted to ETA's National Office no later than August 15, 2014, by sending, via e-mail, an electronic copy of the proposal to ows.sbr@dol.gov. Due to the tight timeframe for developing and submitting supplemental budget requests, ETA asks states to provide only the information requested. ETA will only consider proposals that meet the minimum standard score of 80 points. If the total amount of funds requested in all of the state applications exceeds the amount of funding available, funds will be awarded from the highest score in descending order until the funds are exhausted. After projects have been approved, ETA will issue an award letter to states listing the project(s) to be funded and the total funding level for the state.

States must obligate the funds for misclassification projects by September 30, 2016, and liquidate the obligations within 90 days after that date. Upon written request from the state, no later than August 31, 2016, the grant officer may extend the liquidation period only if the funds have been obligated to an outside contractor. An extension cannot be granted if the funds are intended for use by state staff or by another state agency.

During the life of the project, expenditures should be reported on the ETA 9130 (ETA Financial Report) in the remarks section. By applying for these funds, the state is agreeing that the project will be completed with no additional Federal funding.

6. **Proposed Data Collection**. ETA is developing a data collection request for OMB approval for quarterly state reporting on the implementation of SBR activities. This request may include reporting information on SBR project quarterly expenditures, the completion of specific project milestones, and additional data necessary to assist the National and Regional offices in monitoring implementation. ETA will communicate with the UI system to seek comment on the proposed data collection through the Paperwork Reduction Act clearance process, and will notify states upon OMB approval of the final data collection. ETA anticipates this data collection will be in place for states that receive grants under this SBR opportunity.
7. **“High Performance Bonus” Program**. ETA will make a total of \$2 million available to reward states that have demonstrated a high level of performance or significant improvement at detecting worker misclassification and enforcing state UI tax requirements on employers who failed to properly classify their workers. The “High Performance Bonus” awards must be used to enhance the prevention and detection of worker misclassification or to improve UI integrity in the state.
 - **Eligible States**. Only states with UI Tax programs that ETA has determined to be in good standing are eligible to receive the “High Performance Bonus” award. States that fulfill the following requirements are considered to be in good standing because they have filed all of the necessary reports that measure their ability to detect misclassification; they have validated the data in those reports; and they have achieved a passing grade for the measure that evaluates audits that are effective at detecting worker misclassification:
 - Filed all Federal reports required in ET Handbook No. 401, Section II – Fund Management Activity during the award measurement period of January 1, 2012, through December 31, 2013;
 - Submitted and passed all five UI Tax Data Validation populations; and
 - Received an overall score of “Pass” for the Effective Audit Measure (EAM) for calendar year 2013.
 - **Award Amounts**. ETA will make four individual state awards, the base amount of each will be in the amount of \$250,000, for a total of \$1 million. The remaining \$1 million will be allocated proportionally among the four selected states according to the size of their employer population, in comparison to the overall number of employers for the four states combined. No single state may be eligible to receive more than one “High Performance Bonus” award.
 - **Measurement Criteria**. ETA will award funds to the four selected states based on the following criteria:

- Two Highest Performing States - Using the EAM for the calendar year 2013, ETA will determine which two eligible states passed the EAM with the highest total score. Each of the two states will receive a base award of \$250,000 plus their share of the additional \$1 million, prorated based on the employer population, as described above; and
 - Two Most Improved States - Using the EAM, ETA will compare the two calendar years 2012 and 2013, and select the two eligible states with the highest percentage of improved total score from 2012 to 2013. Each state will receive a base award of \$250,000 plus their share of the additional \$1 million, prorated based on the employer population, as described above.
- **Award Notification.** ETA will notify the four High Performance Bonus states no later than July 15, 2014. No later than 30 days after notification, each of the four states must submit form SF-424 (Application for Federal Assistance) and a statement of work that describes how the award will be used. ETA will provide further instructions to the awardees once the awards are announced. States must obligate the funds for from these awards by September 30, 2016, and liquidate the obligations within 90 days after that date. Upon written request from the state, no later than August 31, 2016, the grant officer may extend the liquidation period only if the funds have been obligated to an outside contractor. An extension cannot be granted if the funds are intended for use by state staff or by another state agency.

8. Action Requested. State administrators are requested to:

- Provide information contained in this UIPL to appropriate staff; and
- Send, via e-mail, an electronic copy of the proposal to ows.sbr@dol.gov.

9. Inquiries. Inquiries should be directed to the appropriate Regional Office.

10. Attachment. Supplemental Budget Request Outline