EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DPM
	DATE January 27, 2015

ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 9-13, Change 1**

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU
Assistant Secretary

SUBJECT: Integrity Performance Measure for Unemployment Insurance

1. **Purpose**. To inform State Workforce Agencies (SWAs) about a revision of the improper payment rate methodology for Unemployment Insurance Performs Core Measures.

2. **References**.

- *Improper Payments Information Act of 2002* (IPIA), Public Law (Pub. L.) 107-300 (31 U.S.C. 3321 note);
- *Improper Payments Elimination and Recovery Act of 2010* (IPERA), Pub. L. 111-204 (31 U.S.C. 3301 note and 3321 note);
- *Improper Payments Elimination and Recovery Improvement Act of 2012* (IPERIA), Pub. L. 112-248 (31 U.S.C. 3321 note);
- U.S. Department of the Treasury Interim Rule with Requests for Comments – *Offset of Tax Refunds Payments To Collect Delinquent State Unemployment Compensation Debts*, 76 F.R. 5070;
- *Notice Requesting Public Comment on Two Proposed Unemployment Insurance (UI) Program Performance Measures to Meet Reporting Requirements in the Improper Payments Elimination and Recovery Act of 2010 (IPERA)*, 77 F.R. 7602;
- Executive Order (E.O.) 13520, *Reducing Improper Payments* (November 20, 2009);
- Office of Management and Budget (OMB), Circular No. A-123, Appendix C Parts I, II and III (Revised) *Requirements for Effective Measurement and Remediation of Improper Payments*, and OMB Memorandum M-15-02, Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments* (Oct. 20, 2014);
- Unemployment Insurance Program Letter (UIPL) No. 02-09, *Recovery of Unemployment Compensation Debts Due to Fraud or to Working while Claiming Benefits from Federal Income Tax Refunds*;

RESCISSIONS	EXPIRATION DATE
None	Continuing

- UIPL No. 9-13, *Integrity Performance Measures for Unemployment Insurance*;
- Benefits Accuracy Measurement (BAM) State Operations Handbook (ET Handbook No. 395, 5th edition); and
- Unemployment Insurance Reports Handbook (ET Handbook No. 401, 4th edition).

3. **Background**. The Improper Payment Information Act (IPIA), as amended, requires agencies of the executive branch, including the Department of Labor, in accordance with guidance from the OMB, to review their respective programs and activities to identify those that may be susceptible to significant improper payments, estimate the amount of those improper payments (overpayments and underpayments) using a standardized method determined by OMB, and report to Congress on those estimates and corrective actions the agency is taking to reduce future improper payments. In 2010, the Improper Payments Elimination and Recovery Act (IPERA) amended IPIA to clarify and enhance the responsibilities of federal agencies. Under the combined requirements of IPIA, IPERA, and the governing OMB guidance, each covered agency must comply with a number of obligations, among them:

   - Conducting periodic reviews at least once every three fiscal years (FY) of programs and activities susceptible to significant improper payments. Significant improper payments are defined as gross annual improper payments by a program in the preceding FY that exceed either: (1) $10 million and 1.5 percent of program outlays (as of FY 2013), or (2) $100 million in improper payments regardless of the improper payment percentage of total program outlays;
   - Include a statistically valid estimate of the improper payments made by each program or activity it identifies as susceptible to significant improper payments in its annual financial statement; and
   - Included with its estimate: (1) a report on actions it is taking to reduce improper payments, and (2) for programs or activities expending $1 million or more annually, a report on actions to recover improper payments that have been identified in recovery audits that agencies are now required to conduct, when such audits are determined to be cost-effective. In addition, when compiling its plan to reduce improper payments, an agency must set OMB-approved reduction targets and a timeline for future levels of improper payments.

   The IPERA also requires that the Inspector General (IG) of each agency report annually on whether the agency is in compliance with the requirements and amendments put in place by the statute. To be in compliance with the law, all programs and activities above 1.5 percent and $10 million or $100 million must keep improper payments below 10 percent.

   Each year the Employment and Training Administration (ETA) reports integrity rates for the UI program in the Department's Agency Financial Report (AFR), as required by the IPIA and the IPERA. Prior to 2013, the improper payment rate included all overpayments and underpayments estimated from the BAM survey. For the 2013 IPIA/IPERA reporting period, ETA and OMB developed a new methodology for calculating the UI improper payment rate which subtracted UI overpayment recoveries reported on the ETA 227 report from total overpayments. However, on January 10, 2013, the IPERIA of 2012 was enacted, requiring agencies to include all identified improper payments in the reported estimate and explicitly precluding netting out recoveries. As a result, ETA worked with OMB to identify a new methodology for estimating the UI improper payment rate for FY 2014. This new methodology no longer nets out recoveries but excludes improper payments that are determined to be "technically proper" under state UI law. The payments that are deemed to be "technically proper" by BAM audit investigators are those which meet applicable state statutory requirements.

Reasons that certain payments are determined to be "technically proper" under state UI law include:

- Finality Reasons – This includes payments with an eligibility issue(s), but the state cannot take official action to establish an overpayment for recovery because the time elapsed between the decision to pay the claimant and the detection of the eligibility issue exceeds the period established in state law for establishing an improper payment. In other words, such payments are considered final under the state UI law and cannot be legally established for recovery.
- Other Reasons – This category includes payments with an eligibility issue(s), but the state does not take official action to recover the overpayment because the claimant is without fault for the error creating the improper payment, and recovery would be against the state's standard of "equity and good conscience."

In July 2014, OMB approved the use of ETA's proposed improper payment rate estimation methodology for the FY 2014 IPIA reporting period.

4. **Improper Payment Rate Measure**. This section provides the new definition and calculation of the new measure (which becomes effective for states in **IPIA 2015**, July 2014 to June 2015) and reiterates the Acceptable Levels of Performance (ALP), performance period, and requirements for failure to meet the performance standard.

   Definition: UI benefits overpaid plus UI benefits underpaid divided by the total amount of UI benefits paid. Overpayments, underpayments, and total UI benefits paid are estimated from the results of the BAM survey of paid UI claims in the state UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX) programs. Overpayments and underpayments that are determined to be technically proper under state UI law for finality and other reasons are excluded from the measure.

   Calculation: The improper payment rate is estimated according to the following formula:

$$IPR = \frac{UI\ benefits\ overpaid + UI\ benefits\ underpaid}{Total\ UI\ benefits\ paid} x100$$

   The overpayment, underpayment, and total amount of UI benefits paid components of the measure are calculated from BAM using data elements provided in Attachment. The new methodology will be effective for the 2015 IPIA reporting period.

ALP: IPERA requires an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under the IPIA. An improper payment is defined as any payment that should not have been made or that was made in an incorrect amount, including both overpayments and underpayments.

In accordance with IPIA and IPERA requirements, the Department maintains an ALP of less than 10 percent in the IPIA 2014 reporting period.

Performance Period: The performance period will be based on BAM data for the IPIA reporting period (July to June): BAM sampling weeks (referred to as batches) YYYY27 to (YYYY+1)26. The IPIA 2015 performance period will include BAM batches 201427 to 201526. Per the BAM State Operations Handbook (ET Handbook No. 395, 5th edition), 98 percent of BAM cases must be completed within 120 days after the week ending date of the BAM sampling batch. Therefore, state performance will be based on BAM sample cases completed (closed by the BAM supervisor) by close of business October 28, 2015 (120 days after the ending date for batch 201426).

Sampling Error: Because the BAM component of this measure continues to be based on sample data, the sampling error of the estimated BAM improper payment rate will continue to be taken into account when determining whether or not a state meets the ALP. As such, the Department will continue to compute the sampling errors of the estimated overpayments and underpayments using a probability threshold of 5 percent or less ($p \leq 0.05$) in the confidence interval used to determine whether or not a state's improper payment rate exceeds the 10 percent ALP with statistical significance.

Failure to meet the ALP: States failing to meet the ALP for the 2015 IPIA reporting period will be expected to develop a corrective action plan (CAP) as part of the FY 2017 State Quality Service Plan (SQSP).

5. **Action Requested**. Copies of this directive should be provided to all pertinent units within the SWAs.

6. **Inquiries**. Questions should be addressed to the appropriate Regional Office.

7. **Attachment**.

Attachment: BAM Data Elements Used to Compute the Improper Payment Rate

Attachment

BAM Data Elements Used to Compute the Improper Payment Rate

- Estimated overpayments and underpayments are derived from the weekly BAM samples.
- Original amount paid is captured in BAM data element f13 and is defined as the amount paid to the claimant in the key week.
- Sample data is weighted to make inferences concerning the population. The weight is equal to the number of weeks of unemployment compensation paid during the week from which the BAM sample was selected (b_comparison table data element cm2) divided by the number of completed BAM sample cases for that week (if f13 > 0 and (h9 is not null or c1='8' or '9')).

Rate	Paid Claim Action Code	Cause
Overpayment Rate	BAM investigation determines that the payment was too large: **Includes key week errors with (ei2) action codes 10, 11, and 12 with total error amount limited to the maximum amount of the dollars originally paid in the key week (i.e. overpayment amount must be less than or equal to (f13)):** 10 - Fraud 11 - Nonfraud recoverable 12 - Nonfraud nonrecoverable For cases with more than one error - the errors are sorted by: • Key Week Action (ei2) (Ascending) [10, 11, and 12] • Amount of Key Week OP (ei1) (Descending) • Error Issue Index Number (eidx) (Ascending) **Excludes errors with (ei2) action codes 13, 14, 15, and 16:** 13 - Technically proper due to finality rules 14 - Work Search Formal Warnings 15 - Technically proper due to rules other than finality or formal warning rule 16 - Overpayment established which was later "officially" reversed, revised, adjusted, or modified and BAM disagrees with "official" action (e.g., Appeals unit reverses BAM determination and BAM disagrees).	Includes all cause codes (ei3). ET Handbook No. 395 (pp. V-5 through V-7)

Rate	Paid Claim Action Code	Cause
Underpayment Rate	BAM investigation determines that the payment was too small: **Includes key week errors with (ei2) action code 20 with total error amount limited to the maximum weekly benefit amount plus maximum dependents allowance – the amount originally paid (f13):** 20 - Supplemental check issued/offset applied or increase in weekly benefit amount (WBA), dependents' allowance (DA) entitlement, maximum benefit amount (MBA), or remaining balance (RB) **Excludes errors with key week error (ei2) action codes:** 21 - Technically proper due to finality rules 22 - Technically proper due to rules other than finality 23 - Supplemental check issued/offset applied which was later officially reversed, revised, adjusted or modified, and BAM disagrees with the official action 24 - BAM determines payment was too small, but claimant is not entitled to supplemental payment due to collateral issues.	Includes all cause codes (ei3). ET Handbook No. 395 (pp. V-5 through V-7)

- The total UI benefits paid is computed using the population dollars from which BAM pulled its sample, adjusted for weighted invalid sample dollars excluded (b_comparison.cm4 [Total Dollars Paid or Compensated in the Batch Week]). The table below presents an example of this computation.

Total Dollars Paid in Population					
Total weighted paid based on the BAM sample	Total weighted excluded from BAM sample	Ratio of the weighted dollars excluded	Total paid population from which samples were pulled	Dollars excluded from the population	Amount paid
(A)	**(B)**	**(C=B/A)**	**(D)**	**(E=C*D)**	**(F=D-E)**
$1,413,598,059.92	$41,480,454.27	0.0293	$1,407,411,599	$41,298,919.49	$1,366,112,680