

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



FEB 1 2011

MEMORANDUM FOR: DANIEL R. PETROLE
Acting Inspector General

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Executive Order (E. O.) 13520 Report on High-Dollar
Overpayments in the Unemployment Insurance (UI)
Program

This transmittal reflects the Fiscal Year 2010 fourth quarter (July to September 2010) High-Dollar report for the UI program as required by E. O. 13520, Reducing Improper Payments.

Section 3 (f) of the E. O. requires that at least once every quarter the head of each agency (or designated official) with programs designated as "high priority" by the Office of Management and Budget (OMB) shall submit to the agency's Inspector General and the Council of Inspectors General on Integrity and Efficiency (CIGIE) a report on any high-dollar overpayments identified by the agency. The UI program meets the threshold established by OMB of at least \$750 million in improper payments as reported in the Department's annual Performance and Accountability Report and has been designated as a high-priority program.

Attachments

cc: Council of Inspectors General on Integrity and Efficiency

High-Dollar Report Unemployment Insurance

As required by Section 3 (f) of Executive Order 13520 and according to the guidelines specified in section C (3) of Part III to Office of Management and Budget (OMB) Circular A-123, Appendix C, the Department of Labor has identified in the attached report the number of individuals during the fourth quarter (July to September 2010) of Fiscal Year (FY) 2010 who received over \$5,000 in Unemployment Insurance (UI) benefits and who received erroneous UI payments in excess of 50 percent of the correct amount paid. Please note that cumulative UI benefits may have been paid during more than a single quarter. On November 18, 2010, OMB provided guidance on High-Dollar Report reporting issues that the Department had raised (see Attachment A).

Information on high-dollar overpayments is collected through Benefit Accuracy Measurement (BAM), which is a statistical survey of paid and denied UI claims. State BAM investigators are required to complete 95 percent of their cases within 90 days of selection. States must also complete 98 percent of their calendar year cases by April 30 of the following year. According to section C (3) (j) of Part III to Office of OMB Circular A-123, Appendix C:

Subsequent to the first [High-Dollar] report, agencies shall complete, submit, and publicize these reports at least once a quarter (i.e., four times per year) thereafter. Each quarterly report shall be completed, submitted, and published by the last day of each quarter.

Therefore, high-dollar data will be reported according to the following schedule.

Reporting Quarter	BAM Audit Completion Date	High-Dollar Report Submitted By
January - March	June 30	September 30
April - June	September 30	December 31
July - September	December 31	March 31
October - December	April 30	June 30

During the July to September 2010 reporting period, BAM completed audits for 6,096 paid claims. BAM data are available only at the state level of reporting. BAM covers the three largest permanently authorized unemployment compensation programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX). Although overpayments for all of these programs, including high-dollar overpayments, are included in the population from which BAM samples are drawn, because BAM surveys only a small percentage of total UI paid claims, the number of UI benefit recipients with high-dollar overpayments identified through BAM is significantly less than the number of high-dollar overpayments in the population.

State UI Benefit Payment Control (BPC) units are responsible for identifying and recovering all UI overpayments. States currently report to the Department aggregate data on overpayment dollars established and recovered but do not identify specific individuals who received UI benefits overpayments. The Department has begun the process of modifying the ETA 227 - Overpayment Detection and Recovery Activities report to accommodate reporting of the total number of high-dollar overpayments identified by state BPC operations. Modification of this report requires the approval of OMB under the Paperwork Reduction Act. Once we have received OMB's approval to modify the data collection, ETA will issue reporting instructions to the state agencies, which will then have to complete the computer programming required to assemble and report the data. We anticipate that not all states will be ready to report at this time due to resources and capacity limitations. Given these requirements, we estimate that ETA can begin reporting high-dollar overpayment data for the state populations beginning with the first quarter of calendar year 2012 at the earliest. Until then, we will continue to provide sample counts from the BAM survey.

The Department has developed several management initiatives to recover and prevent improper payments in the UI program and is considering several new initiatives. These initiatives, along with management challenges in the UI program, are discussed in a paper that the Office of Unemployment Insurance (OUI) prepared at the request of OMB as part of the FY 2012 Budget Passback (see Attachment B). An attachment to this paper summarizes these management initiatives and relates each activity to specific root causes (see Attachment C).

The UI High-Dollar Overpayment Report for July to September 2010 is provided at Attachment D. Previous UI High-Dollar reports are posted on the OUI Payment Accuracy Web page (http://www.oui.doleta.gov/unemploy/improp_pay.asp).

Attachments:

- A. OMB e-mail of November 18, 2010, providing guidance on High-Dollar reporting.
- B. FY 2010 Budget Passback paper: Unemployment Insurance (UI) Integrity Initiatives and Management Challenges.
- C. Attachment to FY 2010 budget passback paper.
- D. High-Dollar Overpayment Report for July to September 2010.

Attachment A

From: Pika, Joseph T. [Joseph_T_Pika@omb.eop.gov]
Sent: Thursday, November 18, 2010 2:41 PM
To: Spisak, Andrew - ETA; Raman, Subri - ETA; Gilbert, Gay - ETA; Ziegler, Dale - ETA
Cc: Kitti, Carole
Subject: FW: High Dollar Report

All -

Thanks for speaking with us this morning about DOL's efforts to comply with EO 13520's High-Dollar Quarterly reporting requirements for the UI program. As we discussed on the phone, below are our written responses to your questions. Please let us know if you have any additional questions or clarifications on this or any other EO requirements.

Thanks,
Joe

From: Spisak, Andrew - ETA [mailto:Spisak.Andrew@dol.gov]
Sent: Monday, October 04, 2010 8:20 AM
To: Pika, Joseph T.
Cc: Raman, Subri - ETA; Dean, Nancy - ETA
Subject: High Dollar Report

Hi, Joe. We are preparing to request a modification of the reporting requirements for the Overpayment Detection and Recovery Activities report (ETA 227) to obtain a more accurate count of the number of UI claimants in the population who meet the definition of "high dollar" overpayments (payments in excess of \$5,000). As you know, we have been reporting this information based on the sample cases in the Benefit Accuracy Measurement survey, which significantly undercounts the population of individual high dollar overpayment recipients.

In preparing the reporting instructions for the state agencies, we have some questions about the application of the definition from the OMB Issuance of Part III to OMB Circular A-123, Appendix C (p.18), stated below.

1. The definition refers to cases "where the total payment to an individual exceeds \$5,000 as a single payment or in cumulative payments for the quarter". State agencies report overpayments established for recovery during the quarter. However, these overpayments may relate to payments that were made prior to the quarter. Claimants establish eligibility for UI for a benefit year, and are usually entitled to up to 26 weeks of benefits in the regular State UI (and federal) programs. Should states only report that portion of the overpayment that relates to payments made in the quarter? If so, the number of high dollar overpayments reported will be dramatically less, because the \$5,000 threshold will not be met within a single quarter. Also, it would be burdensome for states to separate weeks of UI affected by the overpayment by quarter.

OMB believes that agencies should report overpayments in a quarterly report corresponding to the quarter that the overpayments are identified by the state or federal staff, regardless of whether the payments were made in only that specific quarter or include overpayments from another one. Accordingly, for UI's reporting, states should include all eligible payments to a recipient after they are identified, and not separate them into quarters.

2. Should states include overpayments established for the Extended Benefits (EB), Emergency Unemployment Compensation (EUC), and Federal Additional Compensation programs as well as State UI, UCFE, and UCX? If so, should these be reported separately from the permanent programs? (Note: the current reporting instructions for the ETA 227 report include EB overpayments. There is a separate 227 report for EUC overpayments.)

OMB believes that for its quarterly high-dollar reports under EO 13520, DOL should only include eligible overpayments made under its permanent UI programs.

3. If both the amounts paid and overpaid exceed \$5,000, but the overpayment does not reach the 50% threshold, should these be excluded? Example: Paid - \$16,000; Overpaid - \$5,100; Properly Paid - \$10,900; OP / Proper - \$5,100 / \$10,900 = 46.8%.

OMB included both a dollar and percentage threshold in the EO 13520 implementing guidance so that it would not place too large of a burden on agencies and their staff to implement the new requirements. Accordingly, if the overpayment reaches the dollar threshold but not the percentage threshold (50%), or the percentage threshold but not the dollar threshold, DOL is not required to report these overpayments and may exclude these payments from its quarterly high-dollar reports.

Thanks for any guidance you can provide for these questions.

e) Section 3(f) of the Executive Order requires agency heads to submit quarterly reports on "high-dollar" overpayments. What is a "high-dollar" overpayment?

A high-dollar overpayment can be made to an individual or an entity. A high-dollar overpayment is any overpayment that is in excess of 50 percent of the correct amount of the intended payment under the following circumstances:

1. Where the total payment to an individual exceeds \$5,000 as a single payment or in cumulative payments for the quarter; or
2. Where the payment to an entity (see definition of an entity in Section 5: *Agency Submission to the Improper Payments Website*) exceeds \$25,000 as a single payment or in cumulative payments for the quarter.

Examples of overpayments that would need to be included in an agency's quarterly report on high-dollar overpayments include:

1. A single payment or cumulative payments to the wrong individual or entity that exceeds the respective \$5,000 or \$25,000 limit;
2. A single payment or cumulative payments to the correct individual of \$6,500 when the intended amount was \$3,000 (the payment is more than 50 percent higher than the intended amount, and the total payment is above \$5,000, thus meeting both criteria to qualify as a high-dollar improper payment to an individual); and
3. Cumulative amounts of overpayments to an entity that exceed the 50 percent and \$25,000 threshold during a quarter (e.g., even if an agency has an ongoing relationship with an entity and typically corrects overpayments or underpayments via its next payment cycle, it would need to report these improper payments if they are above the 50 percent and \$25,000 amount for a quarter).

Given the potential significant resource and operational challenges agencies may face to implement this provision, OMB will work with agencies to implement this requirement.

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Unemployment Insurance (UI) Integrity Initiatives and Management Challenges

As part of the Fiscal Year (FY) 2012 budget process, the Office of Management and Budget (OMB) has requested that the Department of Labor review its corrective actions with respect to improper payments in the UI program and determine if the Department can take quicker, more immediate administrative actions to reduce improper payments. This paper: 1) reviews current management initiatives to reduce improper payments in the UI program; 2) discusses additional integrity options that the Department of Labor is currently considering; and 3) notes the management challenges faced by the Department.

Background

Improper payments in the UI program are measured by the Benefit Accuracy Measurement (BAM) survey. BAM includes the three largest permanently authorized unemployment compensation (UC) programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). The 50 states, the District of Columbia, and Puerto Rico participate in BAM. The U.S. Virgin Islands does not participate in BAM due to cost-benefit considerations, as provided by the regulation that established the quality control program for UI [20 CFR 602.22].

For the most recent reporting period for the Improper Payments Information Act (IPIA), the Department of Labor failed to meet its target for the overall improper payment rate and for the supplemental rates, which focus on components of the UI program. Since the Department transmitted its IPIA report to the OMB in November, the annual UI overpayment rate has increased further, from 10.6 percent for the period July 2009 to June 2010 to an estimated 11.5 percent of total benefits paid for FY 2010. As you may be aware, ETA also captures an operational rate, which more accurately reflects the overpayments over which states have some control. The operational rate has also increased from 5.7 percent for the period July 2009 to June 2010 to an estimated 6.2 percent for FY 2010.

The Department reports the Annual Report overpayment rate and the underpayment rate as part of its IPIA reporting requirements. As required by Executive Order 13520, the Department also reports two supplemental measures -- the Operational overpayment rate, which includes those fraud and non-fraud recoverable overpayments that state agencies are expected to identify and establish for recovery through their Benefit Payment Control (BPC) activities, and the Employment Service (ES) registration rate, which measures the percentage of UI claimants who were required to register with the state ES, but who were not actively registered as of the UI paid week selected for the BAM audit.

The BAM survey process is extremely thorough and one of the most sophisticated processes for projecting improper payments in the government. BAM audits take the most recent information available, whether it was available at the time of the claim or not, and determines whether the claimant was properly paid. Therefore, BAM captures

improper payments that may or may not be controllable by the states. Therefore, the annual rate reported for UI utilizing BAM data also includes both controllable and non-controllable improper payments.

Below is a list of the primary root causes of improper payments in the UI program:

- 1) Benefit Year Earnings (BYE) (29.3%) – a claimant continues to claim and receive benefits after returning to work;
- 2) Separation Issues (19%) – information regarding the claimants separation from work is received after a claim is paid that disqualifies them from being eligible for benefits and creates an overpayment (employer sends inaccurate or late information or a ruling is made on appeal);
- 3) Work Search (18%) – inability to validate the individual has met the state's work search requirements which disqualifies the claimant from being eligible for benefits;
- 4) ES Registration (11.7%) – the claimant is not registered with the state's Employment Service or job bank as required by state statute, disqualifying the claimant from being eligible for benefits;
- 5) Able and Available (5.4%) – the claimant is later determined to be unable or unavailable for work (in the hospital, in jail, etc.), disqualifying the claimant from being eligible for benefits;
- 6) Base Period Wages (5.4%) – it is later determined that the claimant's base period wages were over-reported (due to employer error or an automation error) and the claimant is determined to be eligible for less benefits than they have received.

The majority of controllable UI overpayments are caused by claimants who continue to claim benefits after they return to work and by the inability to get accurate or timely separation information from employers prior to making the decision to pay the claimant. Consequently, our initiatives focus heavily on these sources of improper payments. Attachment 1 provides a summary of all current and proposed initiatives and the root causes they are intended to address.

Current Initiatives

ETA has a number of initiatives in progress designed to improve the UI improper payment rate and they are described below:

Integrity Workgroup

ETA has engaged with the National Association of State Workforce Agencies to form a federal/state workgroup to develop and implement a national action agenda for reducing overpayments. Convened in December 2010, the workgroup is charged with developing a federal/state action agenda that includes strategies to address the following three areas:

1. Reducing overpayments caused by UI claimants who return to work and continue to claim five or more weeks of UI benefits. These claimants are

responsible for nearly half or all BYE overpayments, which account for nearly 30 percent of all UI overpayments (the single largest cause) and represent a population where there is a strong chance to intervene with the use of National Directory of New Hires (NDNH) cross matching to prevent some portion of the claimant's overpayments.

2. Providing technical assistance to states to support state-specific root cause analysis and the development of state-specific action plans to address improper payments. The workgroup will also identify state best practices that can serve as models and are transferrable to other state agencies.
3. Support ETA's identification and dissemination of best practices related to detection, prevention, and recovery of improper payments. ETA has set aside funding to support documentation and plans to disseminate and feature best practices through webinars at a new UI knowledge sharing site on Workforce3 One (www.workforce3one.org) which will be rolled out the first quarter of Calendar Year (CY) 2011.

The workgroup is expected to have preliminary recommendations during the first quarter of 2011.

Implementation of the State Information Data Exchange System (SIDES)

Currently, overpayments attributable to separation issues are the second leading cause of overpayments, accounting for nearly 20 percent of the total. To address this issue, ETA worked collaboratively with states to develop a technology solution to enable more rapid communications between state agencies and employers. The timely exchange of accurate claimant separation information will reduce the number of improper payments to claimants who are ineligible for benefits because they are unemployed voluntarily or were discharged for cause.

Implementation of SIDES has been significantly delayed as a result of the recession that brought many technology challenges to states. Only three states (Utah, Ohio, and Colorado) and one major employer representative (Automatic Data Processing, Inc) have gone live to date. Several other states and TALX (the largest employer representative for UI purposes) are expected to implement in the first quarter of 2011. A total of 22 other states are in varying phases of implementation. As states go live and get positive results, we expect the take up rate by states and employers to rapidly increase. In addition, new applications for SIDES are in the final stages of development that will improve efficiencies and address other overpayment root causes, and will be attractive to employers and states.

ETA has already begun to aggressively work with states this year to expand both state and business take-up. Given that ETA has funded SIDES implementation for most of the states, we are actively pressing states with regard to their commitments relative to their grant funding. In addition, we have engaged the SIDES Executive Committee (made up

of state and ETA representatives) to jointly frame an outreach campaign. As mentioned above, we are also pushing for completion of new SIDES functionality that will be attractive to both states and employers.

Supplemental Budget Requests (SBRs) for Integrity Technology Improvements

ETA has been providing SBRs to states to support state technology investments related to UI integrity since FY 2003 when we put out funds to support states cross-matching with the Social Security Administration (SSA). Similarly, we provided funds to states to access the NDNH. Since FY 2009, ETA has been directed to provide \$10 million to states for integrity activities as part of the Reemployment and Eligibility Assessment (REA) appropriation. ETA has amplified that amount with other funds as they have been available. For example, in FY 2009, we provided \$26.9 million to states and in FY 2010, we provided \$10.7 million.

Messaging Tools for States to Target Return-To-Work Filers

UI benefit recipients will often file UI claims for a week or two after they have returned to work, because they have not yet received their first pay check from their new employer. While generally not considered fraud, these improper payments constitute over one-third of all those who claim benefits while working errors. ETA has engaged a contractor to develop a multimedia (print, audio, and video) message to educate UI claimants that their eligibility for UI benefits ends as soon as they begin employment and earn more than the minimum weekly earnings permitted by state law to remain eligible for benefits. These messages will be positioned to reach all claimants, regardless of the method they use to file their claims -- internet, telephone, mail, or in-person.

UI Integrity Legislation

The recently enacted Claims Resettlement Act of 2010 includes provisions contained in the Unemployment Compensation (UC) Integrity Act of 2010, which was transmitted by the Department to Congress in May 2010. The provisions enacted in the Claims Resettlement Act include:

- Expanded use of the Treasury Offset Program (TOP) to recover non-fraud overpayments, uncollected employer contributions, and associated penalties/interest if the UC debt is due to failure to report earnings or delinquent contributions.
- Repeal of the prohibition on the use of TOP for recovering UC debts older than 10 years and the requirement that the address on the individual's income tax return be within the state seeking the offset.
- Employers are required to report the first day of earnings for new hires to the NDNH.

Additional provisions of the UI Integrity legislation that address benefit improper payments that are pending action by the Congress include:

- States will be permitted to use up to 5 percent of UC overpayments recovered to augment administrative funding to deter, detect, and recover benefit overpayments.
- States will be permitted to use up to 5 percent of contributions collected due to employer fraud or tax evasion, including misclassification of employees, to augment administrative funding for activities related to these purposes.
- States will be required to assess a penalty of not less than 15 percent of the amount overpaid on any claim for benefits that is determined to be due to the claimant's fraud.
- Prohibits states from relieving an employer of benefit charges if the employer's (or its agent's) fault has caused an inappropriate payment and if the employer (or agent) has established a pattern of failing to respond timely or adequately to requests for information.

Passage of the remaining Integrity Act provisions may be more difficult now, given there is no longer a revenue offset that was previously provided by the three enacted provisions.

Budget Proposal to Require Employers to Report Re-Hires in the National Directory of New Hires (NDNH)

ETA is currently working with OMB and the Department of Health and Human Services (HHS) to include a legislative proposal to require employers to report re-hire data in the NDNH to be included in the President's FY 2012 Budget. Currently, legislation on when rehires should be reported is tied to Internal Revenue policies related to filing the W-4 form which only requires reporting of new hires in the following year. We propose requiring employers to report re-hires within 60 days. This change will significantly expand the number of employee records available for matching and can be expected to increase the number of detections, and potential prevention, of overpayments.

Treasury Offset Program (TOP)

Legislation passed in 2008 amended federal law to permit states to recover certain Unemployment Compensation overpayments due to fraud from Federal income tax refunds under TOP. The Department continues to work with the Department of Treasury, Internal Revenue Service (IRS), to facilitate state access to TOP. ETA issued implementation guidance in the fall of 2010 and Treasury had been on track to publish a necessary regulation by the end of December 2010, which was the last remaining federal hurdle to enable state implementation. However, recent legislation extended the ability to offset Federal income tax returns under TOP if the overpayment is the fault of the claimant but not fraud per se. As a result, Treasury has delayed publication of the original rule, which means no states have yet implemented TOP. Treasury has now determined they must revise the original rule causing implementation of the initial provisions to be further delayed until the second quarter of CY 2011.

Reemployment and Eligibility Assessment (REAs)

Using specifically appropriated grants dollars from ETA, states have developed REA programs to engage claimants during their period of eligibility for UI to ensure that they are meeting eligibility requirements and to link claimants with services that will facilitate their reemployment. REA funds are provided to require UI claimants to physically go to a One-Stop Career Center to re-determine their UI eligibility, to provide them with labor market and career information, and to develop a reemployment plan that includes referrals to One-Stop services.

These REA activities reduce improper payments by the early detection and prevention of eligibility violations and speed claimants' return to work. During FY 2010, the Department provided \$50 million in funding to support REA activities in 33 states and the District of Columbia. A total of 40 states have received funding to implement REA programs.

Early reports regarding REA outcomes have shown savings of \$4.60 per dollar invested in the REA initiative. The \$4.60 was developed using a weighted average to account for differences in the size of states. Savings to state unemployment insurance trust fund accounts per invested REA dollar ranged from \$0.40 in North Dakota to \$7.30 in Nevada. In addition, REAs in Minnesota found that they reduced the likelihood of overpayments by at least 3.5 percentage points. For a group that received multiple REA interviews, there was also a reduction in the number of weeks claimed (0.9 weeks); the number of weeks claimed and compensated (1.2 weeks); and the likelihood of exhausting UI benefits (3.7 percentage points). An evaluation of the REA program is in progress and will be completed by June 2011.

REAs primarily address the following root causes related to UI improper payments: continued eligibility issues such as meeting the active work search requirements, being registered for reemployment services, and meeting the able and available for work requirements. Collectively, these root causes account for 35 percent of all overpayments.

Management Challenges

As you are aware, the UI program's structure is somewhat different than other federal programs in that it is founded on the premise of a federal-state partnership. Federal laws and policies provide parameters for program implementation, but states have great flexibility in establishing their administrative processes in the context of state law. Currently, they also have "bottom-line" authority for the use of the administrative funding. Below are some of the challenges that contribute to the improper payment rate.

Structural Impediments. Unlike benefit programs that can defer payment until all eligibility requirements are satisfied, the UI program has a requirement to pay UI benefits "when due" which can cause states to proceed with payment before all information has been received. States have to make the determination of whether or not to pay benefits

based on the best available information. Claimants, employers, and third parties may not report information timely and/or accurately. Especially during periods of high unemployment, most states will emphasize timeliness over accuracy. This policy “catch 22” inherently creates improper payments.

Frequency of Eligibility Determinations. Also unlike other benefit programs, UI eligibility is determined on a weekly basis, which creates many more opportunities for error. In the current environment that includes extended benefit programs, claimants may have up to 100 or more different opportunities to experience an overpayment.

State Law Differences. Improper payment rates often reflect differences in state law. For example, states with strict active work search and ES registration requirements will have perennially higher overpayment rates than those states with no or minimal active work search and ES registration requirements. In addition, states may have more rigorous eligibility requirements that can increase errors and create improper payments.

State Resource Priorities and Capacity. In recent years state staffing resources have been negatively impacted in two ways. First, during the recent recession, many state agencies diverted integrity staff to claims taking functions as a result of the overwhelming number of claims. Fewer staff devoted to these activities has translated into the inability to follow up on data cross-matches and other integrity activities. In addition, despite repeated formal reminders to states that UI is federally funded and does not impact on state budgets, furloughs and hiring freezes have reduced the UI administrative staff overall. As a result, claims adjudications were often conducted by less experienced or inadequately trained staff, resulting in an increased number of claims processing errors. Pressures on state budgets have also been the cause of reduced training, further contributing to the decrease in skilled staff who can accurately administer the relatively complex UI program.

IPIA Reporting Requirements. IPIA improper payment rate targets are set by OMB. Today, the UI improper payment annual rate contains non-fraud, non-recoverable elements that are outside the control of states to successfully impact, such as improper payments that cannot be recovered due to state law finality provisions. ETA has engaged OMB regarding the definition of improper payments and the methodology for calculating the improper payment rate for the UI program over time and has recently done so again. The operational overpayment rate, which we report as a supplemental IPIA measure, targets those fraud and nonfraud payment errors that states are expected to detect and/or prevent.

In defining the improper payment rate to be reported, there is precedent for distinguishing between errors that can be prevented or identified on a cost beneficial basis versus those that are not preventable under normal operating procedures. For example, the SSA currently distinguishes avoidable versus unavoidable errors and their IPIA reporting methodology only includes avoidable errors.

In the FY 2012 Budget Pass-back, OMB has requested ETA to recommend an alternative methodology for calculating the UI improper payment rate. ETA is recommending the adoption of the operational rate as the primary annual rate and to retain the current annual rate as a supplemental measure.

State Information Technology (IT) Capacity. State IT capacity has been strained by the need to reprogram for the several extensions of temporary UC programs. As a result, IT resources have not been available for integrity functions such as crossmatching claimant information with the new hire and other databases. Many state systems are several decades old and cannot be easily adapted to new improper payment detection methods, such as generating follow-up communications with claimants and employers to verify new hire matches. In the FY 2012 budget, ETA proposed a number of UI legislative reforms, including funding to address stated' antiquated IT systems. However, OMB has chosen to not include that specific reform in the final budget.

Another IT issue is that some state UI and ES IT systems are not fully integrated, thereby resulting in technical overpayments because UI claimants are not actively registered, as required by their state law, for ES job referrals and reemployment services. The Department has required Corrective Action Plans (CAPs) from targeted states and continues to aggressively monitor their progress in addressing this problem.

Macroeconomic Effects. Analysis of UI improper payment data over time has shown that economic shifts produce shifts in the improper payment rate. For example, in the middle of a recession, there tend to be fewer separation errors resulting in improper payments because the majority of claims are the result of lay-offs due to lack of work and eligibility is not an issue. There are proportionally many fewer claims that employers contest because the individual was actually fired or quit for cause. As recessions ease and economic conditions improve, generally the improper payment rate will tick up as the proportion of contested claims is proportionally larger.

Cost Benefit. One of the largest root causes of UI improper payments is the area of active work search. State laws vary, but in most states claimants are required, at a minimum, to seek work by contacting potential employers each week and retaining or submitting information that demonstrates they have made those contacts. BAM claims audits have identified an increased number of claimants failing to meet the state's requirements during the recession. This is likely due to "discouraged workers" who have been unemployed for long spells and who have stopped looking for work. Work search errors are extremely challenging to prevent and only labor-intensive audits, which today are conducted for only a small sample of benefit recipients through the BAM program, can detect work search violations. To increase the number of audits is cost prohibitive and not feasible given current levels of administrative funding.

Strategic Options

Below are potential options for addressing the UI improper payment rate.

1. Eliminate Requirement for Independent Verification of New Hire Information.

Currently, the Privacy Act requires that benefits cannot be denied an individual based on a computer cross-match unless the agency independently verifies the information. This independent verification requirement has been interpreted to apply to establishing overpayments as well. In the context of the UI program, gaining independent verification from employers is very workload intensive and time consuming, which delays stopping benefits when a state learns via a cross-match with NDNH that the individual is working and being improperly paid benefits. This issue surfaced with other agencies as well during the working groups that OMB convened following the issuance of the President's Executive Order on Improper Payments in November 2009. According to HHS, they do an additional verification process with the SSA. Given that an additional verification process is already in place, we propose to work with OMB and HHS to consider a legislative change to the Privacy Act that would eliminate the requirement to independently verify NDNH cross-matches for purposes of establishing benefit overpayments. An initial discussion with OMB and HHS was held on January 7, 2011.

Pro:

- The workload necessary to do independent verification would be significantly reduced, freeing up state staff to increase their integrity activities in other areas;
- The number of overpayments established for BYI violations can be expected to significantly increase.

Con:

- Claimant advocacy groups may oppose the elimination of the independent verification requirement;
- The number of improper denial of benefits could increase slightly, which would conflict with the Executive Order 13520 requirement that "efforts to reduce improper payments under this order must protect access to Federal programs by their intended beneficiaries."
- Implementation will be lengthy, given the time it takes to achieve legislative change and the time it will take HHS to develop new employer reporting processes.

2. Dedicated Portion of Administrative Grant for Integrity

State agencies will be required to dedicate a fixed percentage of their annual UI administrative grant to integrity activities (for example, Benefit Payment Control (BPC), BAM, adjudicator training). This option is presented given that the provision in the Integrity Act that would enable states to retain up to 5% of their integrity collections for both benefits and tax operations may be in jeopardy, due to the passage of the two revenue generators in the Integrity Act that would have "paid for" this provision. The Solicitor's Office has indicated that DOL has legal authority to do this, but because the current practice of giving bottom line grant authority to states has been in place for close to 25 years, it would be appropriate to implement this change through regulation.

Pro:

- Base funding for integrity activities would be ensured.
- States would have resources to dedicate staff to relatively labor-intensive activities such as following up with claimants and employers to verify new hire matches.

Con:

- If implementation requires new regulations, implementation will be significantly delayed.
- States can be expected to object to the partial loss of “bottom line” authority and see it as unwanted federal intrusion.
- States that are currently funding integrity above the minimum required percentage might reduce their integrity effort (“race to the minimum”).
- The shift of resources from claims taking to integrity in some states may impact the timeliness and quality performance measures under the Government Performance and Results Act and the Department’s UI Performs performance management system.
- There is no guarantee that states will deploy the integrity resources in the most efficient or productive manner.

3. New State Performance Measures That Incent Improper Payment Prevention

Today, the only formal improper payment performance measure focuses on detection, which actually leads to an increased improper payment rate. The BAM program has long been a sophisticated process for capturing data on improper payments which made the implementation of a detection measure relatively easy. Because of the many managerial challenges identified above, performance measures for prevention were resisted by states. However, the only method to actually reduce the UI improper payment rate is to focus on prevention strategies and, in order to incent states to adopt this focus, we propose to developing a measure or measures to address prevention.

One possibility is to develop a measure focused on increased use of the NDNH to reduce the number of weeks claimants continue to claim after returning to work. Today, half of the claimants that continue claiming after returning to work do so for five weeks or more. It is this group of claimants that could be prevented for being overpaid by more aggressive use of the NDNH. Another possibility is to consider measures focused on the two primary causes of overpayments, separation issues and claimants who continue to claim while working. Given that BAM is the source of current data on these issues and that BAM sample sizes in some states are not sufficient to produce statistically reliable results, using BAM data alone to compute a state measure is challenging. Therefore additional analyses of possible measures, the availability of data and potential additional data collection, and consultation with states are needed to identify the optimal performance measures.

ETA intends to utilize the Integrity Workgroup discussed above to support development of one or more new state measures. We are currently working with the Solicitor’s Office

to determine if measures may be established in policy directives as they have in the past or whether they require regulation.

Pro:

- Performance measures will drive states to focus on activities to prevent improper payments.

Con:

- If implementation requires new regulations, implementation will be significantly delayed.
- New reporting requirements may be required to implement a new measure and would require OMB clearance under the Paperwork Reduction Act.
- States will object to additional federal oversight and potential workload burden.
- The regulation that established the integrity measurement program for UI (BAM) specifically prohibits sanctions or funding incentives to achieve specific error rates in UI programs (20 CFR § 602.43).
- “Unintended consequences” could result, such as states weakening or eliminating UI eligibility requirements to achieve a lower error rate. This has occurred in some states in response to the results of the BAM survey.

4. Budget Authority for Incentives to Improve Performance

The President’s FY 2012 budget includes a request for \$10 million to provide incentives to states for most improved performance in timeliness, integrity, and productivity. We propose to develop an FY 2013 budget initiative to expand or amend the FY 2012 proposal to provide states with funding incentives to reach specific improper payment targets. Given the wide range in state improper payment rates, these targets would likely have to be set on a state-by-state basis to reflect state eligibility requirements and workload. Implementation of this recommendation will require the repeal of 20 CFR §602.43 which specifically prohibits sanctions or funding incentives to achieve specific error rates in the UI program.

Pro:

- Providing funding incentives to states will increase their integrity efforts which will, in turn, support reduction of improper payment rates.

Con:

- The current budget environment may not allow for new spending for new initiatives.
- Repealing the regulation to enable implementation of this proposal will be time consuming and potentially controversial among the states.

5. Supplemental Budget Requests (SBR)

Building on previous SBR opportunities provided to states to support improvements in technology to support integrity activities, the Department would make available SBRs for

states to obtain funding integrity activities that could include technology initiatives or other business process improvements to support reduction of improper payments. For example, these could include the production of automated letters to claimants and employers to follow up on new hire matches and the use of auto-dialers to contact claimants to verify eligibility information at the time they file their claims. SBRs can be an interim method to get targeted integrity funding to states prior to getting necessary regulations and policy in place to require states to target a specific percentage of grant funds for integrity functions. They can also be a supplemental funding incentive for specific areas of emphasis moving forward.

Pro:

- Targeted resources ensure focus on integrity activities.
- Technology supported integrity initiatives can accelerate the verification of potentially disqualifying information thus enabling state agencies to stop UI payments more expeditiously.

Con:

- Additional resources may be unavailable to fund SBRs.
- Based on previous SBRs, the quality of state proposals varies considerably; the efficiency and productivity of proposed solutions are difficult to evaluate before implementation.

6. Use the State Quality Service Planning (SQSP) Process to Gain State Commitment for Use of Current Resources for Integrity Activities.

Another method to ensure state UI administrative funding is devoted to reducing the improper payment rate is through the annual state SQSP process. The SQSP is a strategic planning document that becomes part of each state's grant agreement. When a state is failing a performance measure, the state is required to include a CAP in the SQSP that articulates a specific plan to improve performance in that area. Currently CAPs include action steps and milestones. We propose using the SQSP process to require states failing to meet performance relative to controlling improper payments, be required, as part of their CAPs, to identify specific funding and staff resources that will be used to improve performance in addition to action steps and milestones. We may be able to implement this through policy, but we are currently consulting with the Solicitor's Office on any necessary steps to implement this proposal.

Pro:

- This approach provides a mechanism to require states to commit specific resources to improve prevention, detection, and collection of improper payments.

Con:

- States can be expected to object to the requirement and to view it as federal micromanagement.

- If the policy can only be implemented through regulation, it will take a significant amount of time to implement.

7. Public Service Announcements

We propose working with the Office of Public Affairs to develop a national media campaign to develop public service announcements that would emphasize claimant and employer responsibilities to provide timely and accurate information so that state agencies can accurately determine claimant eligibility for UI benefits. The announcements can also emphasize the loss of trust fund benefits due to fraud.

Pro:

- National focus would raise public visibility of the importance of observing UI eligibility requirements and the cost to the system of fraud and misreporting and supplement state efforts.

Con:

- A national public service campaign would require significant resources and time to develop.
- Resources are limited for a public service campaign.
- The measureable impact on the improper payment rate is uncertain and difficult to measure.

Strategies to Reduce Unemployment Insurance Improper Payments

Root Causes:

- 1) Benefit Year Earnings (BYE) – a claimant continues to certify and is paid benefits after returning to work;
- 2) Separation Issues – information regarding a claimant’s separation from work is received after a claim is paid that is disqualifying, which causes an overpayment (employer sends inaccurate or late information or a ruling is made on appeal);
- 3) Work Search – claimant has failed to meet the active work search requirement, which disqualifies the claimant from being eligible for benefits;
- 4) Employment Service (ES) Registration – the claimant is not registered with the state’s Employment Service or job bank as required by state statute, disqualifying the claimant from being eligible for benefits;
- 5) Able and Available – the claimant is later determined to be unable or unavailable for work (in the hospital, in jail, etc.), disqualifying the claimant from being eligible for benefits;
- 6) Base Period Wages – it is later determined that the claimant’s base period wages were over-reported (due to employer error or an automation error) and the claimant is determined to be eligible for less benefits than they have received.

STRATEGY	ROOT CAUSE ADDRESSED
Current Strategies	
Fed/State Workgroup Focused on Prevention Strategies Targeting Return-To-Work Filers and State Specific Root Causes	Benefit Year Earnings All Root Causes
State Information Data Exchange System (SIDES)	Separation Issues
Supplemental Budget Request Funding to States for Integrity Technology Investments	All Root Causes
Claimant Messaging Initiative Targeting Return-To-Work Filers	Benefit Year Earnings
UI Integrity Legislation ◆ Implementation of newly enacted	All Root Causes

provisions in Claims Resettlement Act ◆ Continue to advocate passage of remaining provisions	
New Legislative Budget Proposal to Require Employer Reporting of Re-hires	Benefit Year Earnings
Reemployment and Eligibility Assessments (REAs)	Work Search ES Registration Able and Available
Proposed Strategies	
Eliminate Statutory Requirement for Independent Verification of NDHH Identified Overpayments	Benefit Year Earnings
Dedicated Portion of State UI Administrative Grants for Integrity	All Root Causes
Implement State Performance Measures Focused on Prevention of Improper Payments	Select Root Causes targeted for greatest impact
Budget Authority for Incentives to Improve Performance	All Root Causes
Offer State Supplemental Budget Requests for Integrity Specific Activities	Select Root Causes may be targeted for greatest impact
State Quality Service Planning Process Changed to Require States to Identify Specific Resources to Improve Integrity Performance	State Specific Root Causes
FY 2012 Budget Proposal to Require Employers to Report Rehires	Benefit Year Earnings
Public Service Announcements	Benefit Year Earnings

Unemployment Insurance High Dollar Report
Reporting Quarter (FY QTR) - 2010.4

State	Amount Paid	Amount Proper	Amount Overpaid	Note
AK	\$7,824	\$262	\$7,562	
Cases			1	
Total OP			\$7,562	
AL	\$3,674	\$0	\$6,354	#
	\$5,300	\$1,804	\$3,496	
Cases			2	
Total OP			\$9,850	
AR	\$10,352	\$461	\$9,891	
	\$10,641	\$0	\$11,466	#
	\$5,430	\$724	\$4,706	
	\$5,733	\$3,528	\$2,205	
Cases			4	
Total OP			\$28,268	
AZ	\$6,000	\$2,400	\$3,600	
Cases			1	
Total OP			\$3,600	
CA	\$6,477	\$0	\$6,477	
Cases			1	
Total OP			\$6,477	
CO	\$7,178	\$272	\$6,906	
	\$8,417	\$443	\$7,974	
	\$7,305	\$0	\$12,662	#
	\$7,792	\$4,835	\$2,957	
Cases			4	
Total OP			\$30,499	
CT	\$3,600	\$0	\$5,760	#
	\$6,890	\$184	\$6,706	
Cases			2	
Total OP			\$12,466	
FL	\$5,250	\$0	\$13,298	#
	\$4,675	\$0	\$6,875	#
	\$4,368	\$0	\$6,446	#

Notes:

Amount Overpaid may exceed amount paid because it includes Extended Benefits and Emergency Unemployment Compensation. Amount paid includes State UI, UCFE, and UCX payments only.

Source: UI Benefit Accuracy Measurement

Prepared by OUI Division of Performance Management on 19 Jan 11

Unemployment Insurance High Dollar Report
Reporting Quarter (FY QTR) - 2010.4

State	Amount Paid	Amount Proper	Amount Overpaid	Note
Cases			3	
Total OP			\$26,619	
IA	\$5,984	\$0	\$6,575	#
Cases			1	
Total OP			\$6,575	
IL	\$4,620	\$0	\$7,301	#
Cases			1	
Total OP			\$7,301	
IN	\$3,200	\$0	\$5,870	#
	\$7,770	\$4,650	\$3,120	
Cases			2	
Total OP			\$8,990	
KY	\$5,208	\$2,734	\$2,474	
	\$4,980	\$0	\$8,300	#
	\$7,220	\$0	\$7,856	#
Cases			3	
Total OP			\$18,630	
LA	\$7,100	\$1,988	\$5,112	
	\$1,804	\$0	\$12,182	#
	\$534	\$0	\$6,459	#
	\$6,422	\$0	\$6,422	
	\$6,065	\$137	\$5,928	
	\$5,928	\$2,664	\$3,264	
Cases			6	
Total OP			\$39,367	
MA	\$11,007	\$3,088	\$7,919	
	\$6,525	\$0	\$6,765	#
Cases			2	
Total OP			\$14,684	
MD	\$6,628	\$358	\$6,270	
	\$5,025	\$0	\$26,704	#
	\$7,790	\$0	\$9,845	#
	\$8,242	\$3,679	\$4,563	
	\$8,610	\$865	\$7,745	

Notes:

Amount Overpaid may exceed amount paid because it includes Extended Benefits and Emergency Unemployment Compensation. Amount paid includes State UI, UCFF, and UCX payments only.

Source: UI Benefit Accuracy Measurement

Prepared by OUI Division of Performance Management on 19 Jan 11

Unemployment Insurance High Dollar Report
Reporting Quarter (FY QTR) - 2010.4

State	Amount Paid	Amount Proper	Amount Overpaid	Note
MD	\$8,610	\$780	\$7,830	
Cases			6	
Total OP			\$62,957	
ME	\$5,994	\$0	\$6,172	#
Cases			1	
Total OP			\$6,172	
MI	\$4,709	\$0	\$5,263	#
Cases			1	
Total OP			\$5,263	
MN	\$5,500	\$0	\$5,500	
	\$3,070	\$0	\$6,459	#
	\$5,265	\$0	\$5,850	#
	\$6,277	\$3,135	\$3,142	
	\$7,901	\$3,048	\$4,853	
	\$3,770	\$0	\$5,278	#
	\$11,180	\$1,593	\$9,587	
	\$7,650	\$0	\$9,632	#
Cases			8	
Total OP			\$50,301	
MO	\$1,260	\$0	\$10,384	#
Cases			1	
Total OP			\$10,384	
MS	\$4,230	\$0	\$6,714	#
Cases			1	
Total OP			\$6,714	
MT	\$6,234	\$0	\$7,560	#
	\$6,361	\$3,024	\$3,337	
Cases			2	
Total OP			\$10,897	
NC	\$1,728	\$0	\$15,802	#
	\$8,640	\$3,531	\$5,109	
	\$5,560	\$0	\$5,642	#

Notes:

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Source: UI Benefit Accuracy Measurement

Prepared by OUI Division of Performance Management on 19 Jan 11

Unemployment Insurance High Dollar Report
Reporting Quarter (FY QTR) - 2010.4

State	Amount Paid	Amount Proper	Amount Overpaid	Note
Cases			3	
Total OP			\$26,553	
ND	\$1,724	\$0	\$6,034	#
Cases			1	
Total OP			\$6,034	
NE	\$6,776	\$0	\$7,113	#
Cases			1	
Total OP			\$7,113	
NH	\$1,370	\$0	\$6,309	#
	\$6,380	\$0	\$6,380	
	\$7,686	\$1,708	\$5,978	
	\$6,741	\$2,971	\$3,770	
Cases			4	
Total OP			\$22,437	
NJ	\$5,730	\$2,985	\$2,745	
	\$9,820	\$0	\$9,820	
Cases			2	
Total OP			\$12,565	
NM	\$8,544	\$2,510	\$6,034	
	\$9,798	\$3,408	\$6,390	
	\$7,413	\$0	\$7,938	#
	\$3,408	\$0	\$13,634	#
Cases			4	
Total OP			\$33,996	
NV	\$7,326	\$333	\$6,993	
	\$9,420	\$4,220	\$5,200	
	\$8,999	\$786	\$8,213	
	\$5,226	\$0	\$6,231	#
	\$500	\$0	\$6,942	#
Cases			5	
Total OP			\$33,579	
NY	\$5,670	\$1,800	\$3,870	
	\$6,683	\$0	\$9,761	#
	\$5,670	\$0	\$10,750	#

Notes:

Amount Overpaid may exceed amount paid because it includes Extended Benefits and Emergency Unemployment Compensation. Amount paid includes State UI, UCFE, and UCX payments only.

Source: UI Benefit Accuracy Measurement

Prepared by OUI Division of Performance Management on 19 Jan 11

Unemployment Insurance High Dollar Report
Reporting Quarter (FY QTR) - 2010.4

State	Amount Paid	Amount Proper	Amount Overpaid	Note
NY	\$6,608	\$0	\$7,525	#
Cases			4	
Total OP			\$31,906	
OH	\$6,100	\$3,756	\$2,344	
Cases			1	
Total OP			\$2,344	
OK	\$2,196	\$0	\$5,490	#
	\$7,032	\$0	\$7,618	#
Cases			2	
Total OP			\$13,108	
OR	\$6,409	\$0	\$6,902	#
Cases			1	
Total OP			\$6,902	
PA	\$5,900	\$0	\$6,381	#
	\$3,294	\$0	\$5,628	#
	\$5,298	\$2,254	\$3,044	
Cases			3	
Total OP			\$15,053	
RI	\$5,864	\$2,603	\$3,261	
Cases			1	
Total OP			\$3,261	
SC	\$3,671	\$0	\$5,397	#
	\$7,534	\$0	\$8,173	#
	\$7,503	\$0	\$8,549	#
	\$2,988	\$0	\$5,520	#
	\$3,122	\$0	\$5,542	#
	\$223	\$0	\$12,838	#
Cases			6	
Total OP			\$46,019	
SD	\$3,328	\$0	\$6,182	#
Cases			1	
Total OP			\$6,182	

Notes:

Amount Overpaid may exceed amount paid because it includes Extended Benefits and Emergency Unemployment Compensation. Amount paid includes State UI, UCFE, and UCX payments only.

Source: UI Benefit Accuracy Measurement

Prepared by OUI Division of Performance Management on 19 Jan 11

Unemployment Insurance High Dollar Report
Reporting Quarter (FY QTR) - 2010.4

State	Amount Paid	Amount Proper	Amount Overpaid	Note
TN	\$1,674	\$0	\$5,461	#
	\$6,383	\$3,979	\$2,404	
	\$5,500	\$0	\$6,600	#
Cases			3	
Total OP			\$14,465	
UT	\$8,118	\$3,456	\$4,662	
	\$6,270	\$0	\$13,479	#
	\$6,573	\$0	\$7,199	#
	\$10,638	\$0	\$11,726	#
Cases			4	
Total OP			\$37,066	
WA	\$6,422	\$0	\$7,657	#
	\$11,136	\$6,032	\$5,104	
	\$7,837	\$0	\$10,142	#
Cases			3	
Total OP			\$22,903	
WV	\$5,359	\$1,693	\$3,666	
Cases			1	
Total OP			\$3,666	
WY	\$7,884	\$438	\$7,446	
	\$5,694	\$1,752	\$3,942	
	\$7,884	\$0	\$7,884	
Cases			3	
Total OP			\$19,272	
US #			106	
US \$OP			\$738,000	

Notes:

Amount Overpaid may exceed amount paid because it includes Extended Benefits and Emergency Unemployment Compensation. Amount paid includes State UI, UCFE, and UCX payments only.

Source: UI Benefit Accuracy Measurement

Prepared by OUI Division of Performance Management on 19 Jan 11