

ETA Response to Draft Report

U.S. Department of Labor

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

OCT 17 2011

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: JANE OATES *Jane Oates*
Assistant Secretary for Employment and Training

SUBJECT: Review of Draft Interim Report -- Improving Unemployment
Insurance (UI) Overpayment Detection
Draft Interim Report No. 18-12-001-03-315

Thank you for the opportunity to respond to your report cited above. I would like to reiterate my commitment that the Employment and Training Administration (ETA) will continue to work with the state workforce agencies to develop administrative policies and procedures that will improve the measurement, detection, and recovery of improper payments in the UI program. However, we have some concerns about the findings in the report, as well as the basis for some of the conclusions, which we have previously shared with Mr. Robert Richardson of your office.

ETA's responses to your findings and recommendations are described below.

ETA lacked effective controls over the state's detection of overpayments for the UI Federal programs, leaving programs vulnerable to undetected overpayments arising from error, fraud, and abuse.

The integrity of the UI program is a top priority for ETA and the Department broadly. Throughout the period of implementation of the Emergency Unemployment Compensation of 2008 (EUC08) program, the Federal Additional Compensation (FAC) program, and full Federal funding of the Extended Benefits (EB) program, ETA has actively worked to ensure states were in the best position to implement these programs and pay benefits accurately through extensive guidance and intensive technical assistance. All three of these programs were extremely complex for states to implement, as is described in more detail in Attachment A. In addition, ETA focused the additional resources provided under the American Recovery and Reinvestment Act (ARRA) primarily on state monitoring activities, including monitoring program integrity. Also, during the course of these programs, ETA has developed an extensive and comprehensive strategic plan to improve prevention, detection, and recovery of improper payments for all UI programs. The components of this strategic plan are provided in Attachment B.

Finding 1 — ETA did not establish valid overpayment estimates for Federally-funded emergency benefits.

Recommendation 2 — Develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the UI programs.

ETA Response

Implementation of what could be a burdensome state-level data collection and measurement program to estimate improper payments for the Federal emergency unemployment compensation programs was not feasible or desirable for the following reasons:

- On average, emergency Federal programs during a recession last approximately 18 months. The time to design a collection program, obtain Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act, provide guidance to states, and develop information technology (IT) systems at the Department of Labor and in the states to implement this methodology would take 18 months at a minimum. Given other strains on the system during the Great Recession with respect to staffing and IT implementation of the emergency programs, development time would probably have been much longer.
- While states had additional administrative resources to operate the Federal programs, they did not have sufficient capacity to add a new audit program for the newly implemented Federal programs. State IT staff was already stretched to the limit to simply implement the basic program requirements and the lack of trained program staff forced many states to reassign integrity staff, including regular Benefit Accuracy Measurement (BAM) staff, to process claims due to the overwhelming workload.
- Federal emergency programs differ in their design and, in the case of Emergency Unemployment Compensation 2008 (EUC08), the design changed over time with the establishment of additional tiers. In addition, the implementation of FAC in 2009 increased the complexity and design of the program making it impossible to implement a uniform methodology for sampling and auditing cases (see Attachment A for details).

With respect to the finding that “ETA provided no documentation to show that OMB actually approved its methodology to estimate the Federally-funded overpayments based solely on sampling state-funded benefits,” we note that ETA has previously provided information to the Office of the Inspector General (OIG) which documents that: 1) OMB initiated the request to apply the BAM improper payment rate estimates to the Federally-funded programs; and 2) OMB informed ETA that it was “appropriate to report the \$119 billion figure since it’s consistent to report the American Recovery and Reinvestment Act funds and additional UI benefits that were paid to beneficiaries.” Additionally, we note that OMB did not require ETA to include Federally-funded payments in the BAM samples during the fiscal year (FY) 2008 to FY 2010 reporting period and that OMB did not issue complete guidelines for the Improper Payments Elimination and Recovery Act (IPERA) reporting requirements until April 14, 2011, after the reporting period included in the OIG audit.

Finding 2 — ETA did not measure states’ effectiveness in identifying Federally-funded overpayments.

Recommendation 1 — Establish a valid performance measure for Federally-funded programs.

ETA Response

While ETA acknowledges the requirement in Executive Order (E.O.) 13520 to measure improper payments in all programs, we note that there is no requirement in the E.O., the Improper Payments Information Act (IPIA), or IPERA to establish a performance measure for improper payment detections. The absence of a performance measure and target does not prevent ETA's ability to monitor state performance in detection of overpayments. ETA monitors all UI programs and continuously collects and analyzes data on these programs, including data related detection of overpayments for all programs. State agencies do not differentiate efforts to prevent, detect, or recover improper payments among state and Federally-funded programs. ETA's onsite reviews in the state agencies did not identify any differential treatment of improper payments among programs.

Section 2(a) of the E.O. requires that OMB:

[E]stablish, in coordination with the executive department or agency (agency) responsible for administering the high-priority program annual or semi-annual targets (or where such targets already exist, supplemental targets), as appropriate, for reducing improper payments associated with each high-priority program;

Following consultation with OMB, two supplemental improper payment measures were approved: 1) the BAM Operational Overpayment rate, which is used to estimate detectable and recoverable overpayments; and 2) the Employment Service Registration rate. ETA would like to point out that in developing these supplemental measures, ETA made clear to OMB that these would be based on the BAM survey, which includes only the permanent State UI and Federal unemployment compensation programs for civilian employees and military service members.

In addition, pursuant to OMB's *Requirements for Implementing the Executive Order 13520: Reducing Improper Payments* which requires programs designated as "high priority" by OMB to provide a report to OIG containing information on the agency's efforts to measure and reduce improper payments, ETA submitted a report to the OIG on March 18, 2011 referencing our methodology for calculating the UI improper payment rate. The report also contained a comprehensive strategic plan for reducing improper payments. OIG did not raise the issue of a new methodology for estimating overpayments in the Federal programs at that time.

While ETA did acknowledge that if there was an estimation methodology for the Federal programs, it would be possible to develop a detection performance measure, we also were very clear that it was not feasible or desirable to implement a new sampling process to estimate overpayments for the Federal programs for the reasons provided in the response to Recommendation #1 above.

Finding 3 — ETA could not effectively monitor state performance in identifying Federally-funded overpayments.

Recommendation 3 — Increase its monitoring regarding improper payment detection activities.

ETA Response

ETA has established a requirement for all states to address UI integrity as part of their State Quality Service Plans beginning in FY 2012. ETA has also provided states with detailed data on the root causes of their improper payments and is providing intensive technical assistance to support the development of comprehensive plans to prevent, detect, and recover UI improper payments for all UI programs.

ETA routinely collects data from states relative to the detection of overpayments in the Federally-funded programs. During the period subject to the OIG audit, ETA conducted on-site reviews in every state and provided necessary technical assistance and support for states' implementation of the Federally-funded programs.

Finding 4 — ETA is missing opportunities to detect and collect additional Federally-funded overpayments.

Recommendation 4 — Develop and implement a plan to increase detection efforts over the estimated \$5.6 billion detectable overpayments related to Federally-funded emergency benefits that states did not identify in the past 3 years.

ETA Response

ETA has been continuously working with states to improve detection of overpayments for all UI programs and has dramatically accelerated those activities since the issuance of the EO. A comprehensive summary of current ETA UI integrity initiatives to reduce improper payments is provided in Attachment B. In addition to the strategies listed in Attachment B, ETA is willing to examine additional strategies to improve detection in the EUC, Federal Additional Compensation (FAC), and EB programs.

ETA is committed to detecting and recovering the maximum amount of overpayments in all UI programs within the resources available. ETA has recently submitted aggressive recovery targets to OMB for FY 2011 through 2013, as required by IPERA. Additionally, a new requirement for all states to address UI integrity as part of their annual State Quality Service Plans has been established. ETA has provided states with detailed data on the root causes of improper payments and is providing significant and intensive technical assistance to support the development of comprehensive plans to prevent, detect, and recover UI improper payments. As part of that technical assistance, ETA issued a new recommended operating procedure for state cross matching with the National Directory of New Hires (UI Program Letter 19-11 issued June 10, 2011) designed to enhance both prevention and detection of improper payments.

ETA will explore, and pursue as feasible, the following actions to detect, and establish for recovery, overpayments in the Federally-funded programs.

1. Retroactive state review of paid claims from Federally-funded programs and follow-up of matches obtained from state and national new hire directory matches.

State agencies may have in their files matches of claimant Social Security Numbers with new hire records for payments from Federally-funded programs. However, in many cases follow-up investigations with the employers and claimants to verify dates of employment and earnings were deferred because state integrity staff was reassigned to claims taking activities in response to the sharp increases in workload between 2008 and 2010. States could retroactively conduct these follow-ups, at a level supported by available resources, to detect additional overpayments attributable to benefit year earnings or separations due to voluntary quit or discharge for cause from a benefit-year employer.

If these claims were not submitted for matching at the time the payment was made, the ability of the states to retroactively cross-match claims from Federally-funded programs with the National Directory of New Hires (NDNH) is limited by the record retention provisions in the Computer Matching Agreements that state agencies sign as a condition of matching with the NDNH. The Social Security Act does not allow the Department of Health and Human Services (HHS) to have access to new hire, wage, or UI data when 12 months have elapsed since the date the information was provided, and where there has not been a match resulting from the use of the information in any information comparison activity. The statute also requires that all NDNH data be deleted from the database 24 months after the date of entry into NDNH, which limits the data available for the cross-match to benefits paid that are no older than 24 months.

The states can verify the legal status of claimants through the Systematic Alien Verification for Entitlement (SAVE) operated within the Department of Homeland Security for those claimants that may have been paid when their legal status expired. The limitation for this information is 18 months.

States can also verify claimant eligibility for benefits paid by matching against the state's wage records. However, for the cross-match to be effective, states will have to adjust parameters within their systems to match across different time periods taking into consideration of any statutory changes for earnings disregards that may have occurred for those time periods. It should be noted that the wage record verification is constrained by employer responsiveness to wage cross-match audits as well as the period of time that the state retains the wage records. Additionally, these cross-matches are resource intensive for most states due to the lack of automation in this area. In May, 2011, ETA facilitated the implementation of the State Information Data Exchange System (SIDES) – Earnings Verification format. The implementation of this system would make it less labor intensive and will help states with the retroactive detection of overpayments due to undetected earnings. In FY 2011, ETA provided supplemental funding to 12 states to implement the Earnings Verification format.

2. Review of work search activity for claimants receiving EB payments.

Unemployment Insurance Program Letter No. 12-09, issued in February 2009, reminds states that they must require EB claimants to conduct a systematic and sustained search for work, and to submit tangible evidence of such search, as a condition of being eligible for EB for a week. State agencies could verify their records on claimant work search activities for the weeks compensated to ensure that the necessary work search requirements were fulfilled. However, this activity is labor intensive and may be constrained by resources available to the state agencies.

3. Recovery of FAC overpayments.

We are aware that a number of states encountered significant technology challenges with the implementation of FAC, including ensuring mechanisms to establish overpayments. ETA continues to monitor state implementation of FAC and provide technical assistance as appropriate. In those cases where states were unable to establish overpayment processes for FAC, states could seek retroactive recovery of FAC payments for those overpayments established for state and Federal unemployment compensation program claims. FAC was payable on any claim for which the claimant received at least \$1 in benefits. FAC could be recovered for any established overpayment that completely disqualified the claimant (partial overpayments, in which the claimant was still entitled to a portion of the benefit, would not be included as long as the claimant retained eligibility for at least \$1). As with other retroactive detection activities, there will be significant administrative overhead involved in identifying these payments and capacity issues related to the information technology processes necessary to implementation of this strategy. Contacting the claimants, many of whom will likely be difficult to locate given the elapsed time, will pose a significant challenge and require the investment of significant state agency staff time.

ETA has carefully examined other detection activities to retroactively detect and establish for recovery overpayments for the Federally-funded programs. However, there are significant barriers and challenges for all of these activities.

- Additional overpayments from prior years could be detected by selecting samples of claims to review and investigate in a manner similar to the BAM investigations. However, this would be extremely resource intensive and would not be cost effective. The time and cost to investigate EUC08 and EB claims would be considerably higher than that for the regular UI program due to the complexity of these programs and the follow-up efforts that would be required to locate claimants and employers and obtain documentation for eligibility at the time the payment was made. Many states have been using their most experienced UI staff to operate and manage the EUC08 and EB programs, which are still ongoing. These same staff would likely be needed to work on any new detection efforts, which then could jeopardize ongoing EUC08/EB program operations.
- While we understand states have been cross-matching all claims including regular UI, EUC08, and EB, not all states have done so with the same frequency. It is possible that additional cross-matching could be conducted. However, because of the extensive time and resources required to investigate these matches (potential leads), we do not believe

that states have the resources to conduct these additional investigations. Also, as noted above, there are statutory barriers reflected in the Computer Matching Agreements between the state agencies and HHS that limit access to records in the NDNH.

- Federal law allows for overpayment waivers under certain circumstances for non-fraud EUC08 overpayments. There are 35 states that have waiver provisions for regular UI compensation in their state UI law. These state provisions may be applied to non-fraud EUC08 and EB overpayments under certain circumstances. Thus, it is expected that some overpayments from prior years that could be identified through new detection efforts would not necessarily result in significant recoveries of these benefits.
- Furthermore, there are state finality rules (time limitations) that will prohibit states from retroactively establishing overpayments. These finality provisions vary among states, but based on BAM data these would apply to about 12 percent of the estimated overpayments.

With respect to overpayment recovery for the Federally-funded programs, ETA agrees with the OIG's observation that recoveries would probably be lower than the recovery rate for the permanent state and Federal UI programs, given the statutory limitation of offsetting only 50 percent of future EUC program payments as a recovery method. ETA has identified additional factors that impede recoveries of overpayments for the Federally-funded programs:

- Many of these claimants have exhausted benefits and states are therefore unable to offset overpayments against their unemployment compensation payments, which is a primary method used by states for overpayment recovery.
- Claimants who have been unemployed for long durations have few resources available for the repayment of overpayments.
- The severe decline in the economy and employment situation negatively impacted the primary tools that states have used to recover overpayments, which are by garnishing wages, income tax offsets, and attaching liens to an individual's property to recover the overpayments when the property is sold.

The OIG report cites an ETA cost-benefit study conducted in 2001 to support its analysis of the expected increases in overpayment detections as a result of additional investment of resources. It should be noted that this study was based on the permanent state and Federal programs, not temporary emergency and episodic programs, such as EUC08 and EB, and was conducted in a significantly different economic environment, in which state agency resources were not stressed due to increased workload. Replication of this study for the recent recessionary period would likely yield significantly different results.

ETA will continue its aggressive work with states to improve the prevention, detection, and recovery of all UI overpayments with emphasis on Federally-funded programs, as well as address this issue in state reviews as they are scheduled. Additionally, we will continue to collect data submitted by the states on their overpayment detection and recovery activities to the

extent supported by our existing data collection and reporting systems, and utilize that data to support state monitoring and oversight of improper payment detection and recovery.

Again, thank you for the opportunity to share our comments and thoughts on your report. If you have questions, please contact Gay Gilbert, Administrator, Office of Unemployment Insurance, at 202-693-3029.

Attachment A**Implementation Issues for the Establishment of a Data Collection Program to Measure the Accuracy of Federally Funded Emergency Unemployment Compensation Programs**History of EUC 2008 Implementation

The Supplemental Appropriation Act of 2008 (Public Law 110-252), Title IV—Emergency Unemployment Compensation (EUC08), was signed by the President on June 30, 2008. During the months leading up to the signing and implementation of the law that authorized EUC08 benefits to all states, the National and Regional offices of the Employment and Training Administration (ETA) worked closely with the states to prepare them for implementation of the legislation. The requirements and provisions of the EUC08 program were not specified until final passage of the legislation. The Department provided generic guidance to the states in advance of the enactment to ensure that all states, many of which have aging UI computer benefit systems that cannot be easily adapted to new requirements, would be able to pay benefits once the program became law. The Department issued twenty separate Unemployment Insurance Program Letters (UIPLs) over the ensuing two and one-half years to provide guidance on how to implement and execute the law and all of its subsequent additions, modifications, and extensions.

The first EUC-related UIPL was issued less than a week after the law was signed (UIPL No. 23-08, July 6, 2008), which provided states with instructions for implementing the legislation and operating the EUC08 program, including fiscal and reporting instructions. The EUC08 program initially provided up to 13 weeks of 100 percent Federally-financed compensation to eligible individuals in all states. EUC08 was payable to individuals who (1) have exhausted all rights to regular compensation with respect to a benefit year that ended on or after May 1, 2007; and (2) have no rights to regular compensation or Extended Benefits (EB). To qualify for EUC08 benefits, individuals must have had been employed at least 20 weeks, or the equivalent in wages, in their base periods. Continuing eligibility is determined under the requirements of the individual state's law. As agents of the United States in administering the EUC08 program, states had to follow the instructions and guidance that were provided in the Department's advisories.

The EUC08 program became effective in July 2008 and was due to expire with the last week payable for the week ending June 27, 2009. In response to worsening economic conditions, Congress enacted numerous extensions and modifications to the program. A second tier of benefits was added to the initial 13 weeks, and third and fourth tiers were subsequently added. In February 2009, Congress enacted the American Recovery and Reinvestment Act, which established the Federal Addition Compensation (FAC) program, which provided an additional payment of \$25 per week to every claimant's weekly benefit payment. The EUC08 program is currently scheduled to phase-out beginning January 3, 2012.

Throughout all of the changes, the Department worked intensively with the states to give them guidance and to ensure that the states would be able to implement the programs in a timely and

accurate fashion. The proper payment of benefits is of paramount importance in not only the regular State UI and Federal unemployment compensation programs for civilian employees and military service members, but also in the EUC08, FAC, and EB programs. The same crosschecks, claims audits, and work search requirements apply to both the permanent state and Federal programs and the Federally-funded emergency programs. In fact, for the EB program, stricter work search requirements are in place to attempt to ensure that claimants return to the workforce as soon as possible.

All aspects of the original claim are subject to the agencies' review, crosscheck, and audit processes and are subject to selection for the Benefit Accuracy Measurement (BAM) review process. The agencies conduct weekly eligibility, work search verification, and other eligibility reviews for the EB and EUC08 claims. Generally, these eligibility reviews are in the same manner and extent as they do for regular claim, except for the EB program which has a more rigorous requirement for verifying work search than in most states.

Once all states were paying EUC08, the Department continued to emphasize the accuracy and timeliness of all payments. In response to significant increases in workload -- in some cases quadrupling within a year -- states reassigned some of their tax and Benefit Payment Control (BPC) staff to the claims taking, adjudication, and payment processes. Benefit payouts increased five-fold while the number of people assigned to the integrity functions remained the same, or even decreased. Department staff continued to provide technical assistance to try to maximize the effectiveness of the integrity staff, while ensuring that benefit payments were made properly and expeditiously. Many of the overpayments which occurred during the 2008 to 2010 period are just now being established and collected as staff work the backlog of overpayments detected through cross-matches and interstate audits. The Department's continued monitoring, assistance, and integrity function emphasis will ensure a quality program.

Management Challenges

The history of implementing the EUC08 program, which was discussed in detail above, as well as the operational contingencies presented by the macroeconomic conditions of 2008 to 2010 presented formidable challenges to the Department. Although the Department has not conducted a formal cost-benefit study, our management and technical analyses have identified several significant issues associated with modifying the BAM and BPC programs to support the coverage of temporary and episodic programs. These issues are discussed below.

Operational Costs

BAM

In order to produce estimates at a degree of precision comparable to BAM paid claims estimates, sample allocations of 360 cases in the ten smallest states and 480 cases in the other 42 states conducting BAM would be required -- a total of 23,760 cases nationally.

For paid claims, state investigators spend 5.1 hours, on average, to complete a BAM paid claims investigation, with an additional 3.17 hours for coding and entering data into a computerized

database, reviewing completed cases, and transmitting the data to the Department, for a total of 8.27 hours per investigation. Therefore, a total of 196,495.2 staff hours are required to complete the BAM audits. In fiscal year 2011, state staff costs are estimated to be \$40.81 per hour. This translates to a direct cost of just over \$8 million, which does not take into account additional supervisory overhead and information technology (IT) costs.

BPC

Additional overpayments from prior years could be detected by pulling samples of claims to review and investigate in a manner similar to the BAM investigations. However, this would be extremely resource intensive and possibly would not be cost effective. The time and cost to investigate EUC08 and EB claims would be considerably higher than that for the regular UI program due to the complexity of these. Many states have reassigned their most experienced UI staff to operate and manage the EUC08 and EB programs, which are still ongoing. These same staff would likely be needed to work on any new detection efforts, which could then adversely affect ongoing EUC/EB program operations.

Although states have continued to cross-match all claims including regular UI, EUC08, and EB, not all states have done so with the same frequency. It is possible that additional cross-matching could be conducted. However, because of the extensive time and resources required to investigate these matches (potential leads) we do not believe that states have the resources to conduct these additional investigations.

Also, federal law allows for overpayment waivers under certain circumstances for nonfraud EUC08 overpayments. There are 35 states that have waiver provisions for regular compensation in their state UI law, and these state provisions may be applied to nonfraud EUC08 and EB overpayments under certain circumstances. Thus, it is likely that some overpayments from prior years that could be identified through new detection efforts would not necessarily result in significant recoveries of these benefits.

Furthermore, state finality rules (time limitations), which vary from state to state, will preclude states from retroactively establishing some overpayments. Based on BAM data finality limitations would affect about 12 percent of the estimated overpayments.

IT Issues

- Assuming a new sampling program is developed and distributed to the states, the states would have to undertake extensive programming to create the extract files of the EUC08 and EB program payments from their state management records systems. Because of the legal requirement to pay benefits to eligible claimants “when due,” in periods of high unemployment states make every effort to pay claims as expeditiously as possible. When emergency programs are enacted, states are more likely to prioritize the use of their scarce IT resources to implement the operational and eligibility requirements of the temporary extended benefits programs rather than divert these scarce resources to support sample selection and audit activity.

Staffing Issues

Both BAM and BPC share staffing challenges: 1) the lack of experienced / trained staff during periods of high workloads; 2) the inability to hire additional staff in a timely manner; and 3) the need to reassign staff from integrity to claims taking functions. These are discussed in more detail.

- By definition, extended and temporary unemployment compensation (UC) programs are implemented in response to sharp increases in workload. During these periods of high workload, state agencies reallocate staff from integrity activities, such as establishing overpayments and conducting claims audits, to claims taking functions. During the most recent recession, 23 states reduced their BAM samples by one staff year to free staff for claims processing. Two states – Colorado and Montana – completely suspended BAM operations for several months, creating gaps in integrity measurement in these states.
- In addition, temporary programs such as EUC08 depend on Congressional action. These programs vary in their design and are subject to extensions or expansions. As discussed above, historically, each of these temporary emergency programs has unique eligibility and operational characteristics. Therefore, it is very difficult to plan for and anticipate these programs.
- In order to measure the accuracy of extended and temporary UC programs, states need to add staff. However, because the economic conditions that result in increases in workload also reduce state revenues, many states institute hiring freezes, furloughs, or layoffs to reduce staff costs. Many states, in spite of the Department’s explicit admonitions in public guidance, apply these policies even to positions that are fully funded by the Federal government. Therefore, even if the Congress were to appropriate the additional administrative resources needed to measure the accuracy of payments from the temporary emergency and extended benefit programs, it is likely states would face challenges in utilizing funds for that purpose.
- Because the enactment and extension of extended and temporary UC programs is uncertain, those states that do agree to add staff will begin the hiring process after these programs have been implemented. States will also have to incur costs to train these new staff in the audit methodology to ensure that the audit results are reliable.

Operational Issues

- If states are to conduct additional reviews of temporary and episodic UC program claims, the best tool to detect claiming while earning (Benefit Year Earnings or BYE) issues is National Directory of New Hires (NDNH) matching. The Social Security Act does not allow the Department of Health and Human Services (HHS) to have access to new hire, wage, or UI data when 12 months have elapsed since the date the information was provided, and where there has not been a match resulting from the use of the information in any information comparison activity.

- In addition, the Computer Matching Agreement that each state signs as a condition of accessing NDNH data requires independent verification of employment while claiming indicated by the NDNH match. Verification of NDNH matches is labor intensive, and it is reasonable to assume that the costs of locating employers and claimants for these older claims would be significantly higher than the verification costs of contemporary claims. State agencies will be unable to take official action to establish overpayments for recovery without this costly and time consuming independent verification. It is likely that due to the passage of time, many of these matches will not be verifiable.

Regulatory Authority

The regulation establishing a Quality Control program for UI (20 CFR part 602) provides authority for the Department to waive components of the program based on cost or operational considerations. Given the resource and operational issues discussed above, ETA has taken the position, under authority of the regulation quoted below, that the extension of BAM to include temporary and episodic UC programs is not cost-beneficial.

§ 602.22 Exceptions.

If the Department determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law or in the Department's view is not cost effective, the Department shall use established procedures to advise the State that it is partially or totally excepted from the specified requirements of this part. Any determination under this section shall be made only after consultations with the State agency.

Paperwork Reduction Act

The Department is required to obtain OMB authorization under the Paperwork Reduction Act (PRA) to implement new data collection programs. The PRA process involves pilot testing the proposed methodology to collect cost and staff hour data to conduct the program. The public (claimants, employers, state agencies) must be given an opportunity to comment on the proposed data collection burden. This process is estimated to take one to one and a half years to complete.

Attachment B

Addressing Improper Payments in the Unemployment Insurance (UI) Program

The Employment and Training Administration (ETA), working with our state partners, has been focused for many years on implementing strategies to detect, prevent, and recover UI improper payments and bring down the improper payment rate. These strategies include:

Implementation of New Performance Measures — New state performance measures and strategies which: 1) target reducing BYE improper payments when claimants claim five weeks or more after returning to work by 30 percent the first year, and a total of 50 percent after two years; 2) targets a reduction of improper payment rates higher than 10 percent; and 3) establishes a recovery target for overpayments.

Treasury Offset Program (TOP) — TOP permits states to recover UI overpayments due to fraud by offsetting the claimant's Federal income tax refund. To date, three states have implemented the UI TOP program for recoveries (Michigan, New York, and Wisconsin) and an additional 25 states will implement TOP as a result of the recent supplemental funding.

Enhanced Use of National Directory of New Hires (NDNH) with Recommended Operating Procedures (ROP) — For several years, ETA has encouraged states' use of the NDNH to reduce improper payments in the UI program. Recommended Operating Procedures (SOP) has been developed and provided to states with information about best practices in conducting this match. Any states not already doing so will be required to begin conduct cross-matches using NDNH by December 2011 and all states are strongly encouraged to implement procedures in-line with the ROPs.

Claimant and Employer Messaging — Implementation of a statewide claimant and employer messaging campaign designed to: 1) improve claimants' awareness of their responsibility to report any work and earnings if they are claiming benefits, 2) improve claimants' understanding of work search requirements as a condition of eligibility for benefits, and 3) improve employers' awareness of their responsibility to respond to state requests for separation information and/or earnings/wage verifications. The state's campaign must consider how it may incorporate the messaging products and tools that are currently in development and will be shared with states when completed.

State Information Data Exchange System (SIDES) — SIDES is a web based system that allows electronic transmission of UI information requests from UI agencies to multi-state employers and/or Third Party Administrators, as well as transmission of replies containing the requested information back to the UI agencies. The current implementation of SIDES allows for the exchange of Separation and earnings verification information.

Cross-Functional Task Forces/Virtual Institutes — These are cross-functional teams that include a combination of management, front-line workers, and state subject matter

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experts that will assess and address root causes of improper payments in individual states. The key objectives for these task forces is to have every state focus on the root causes of overpayments that have the highest impact in the state and use this process to inform strategic planning that will achieve immediate and meaningful reductions in the improper payment rate.

High Priority States — Beginning in 2011 and annually thereafter, ETA will identify the states with persistently high improper UI payment rates as "High Priority" and provide targeted and customized technical assistance to improve their performance. ETA will work closely with these states to identify the impediments, action steps, and technical assistance strategies to improve performance with a specific focus on prevention. High Priority states will be subject to additional monitoring and technical assistance until they achieve an improper payment rate under 10% and sustain that performance for at least six months.

State Quality Service Plan (SQSP) / Strategic Plan Development — The SQSP is intended to be a dynamic document states use not only to ensure strong program performance, but also to guide key management decisions, such as where to focus resources. The SQSP should focus state efforts to ensure well-balanced performance across the range of UI activities. The SQSP also is designed to be flexible so as to accommodate, among other things, multi-year planning and significant changes in circumstances during the planning cycle. States can use this flexibility to incorporate the elements from the strategic plans developed by their Cross-Functional Task Forces into the SQSP to address improper payments.

Employment Service (ES) Registration — Providing technical assistance to states with high ES registration errors and implementing technology or other solutions designed to address improper payments due to a claimant's failure to register with the state's Employment Service or job bank in accordance with the state's UI law.

Supplemental Budget Requests (SBRs) - ETA has offered states the opportunity to apply for supplemental funding targeted to support integrity activities including automation to address specific overpayment root causes and core integrity strategies to support prevention, detection and recovery of overpayments. Since 2009, ETA has provided \$101.1 million in supplemental funding to states to support integrity-related projects.

- FY 2011: \$63.5 million
- FY 2010: \$10.7 million
- FY 2009: \$26.9 million