

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 19-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: National Effort to Reduce Improper Payments in the Unemployment Insurance (UI) Program

1. Purpose. The U.S. Department of Labor (Department) is making an immediate call to action to all state administrators to ensure that UI integrity is a top priority and to develop state specific strategies to bring down the UI improper payment rate. This Unemployment Insurance Program Letter (UIPL) provides information to state workforce agencies about a national strategic plan to aggressively target UI overpayment prevention and to request that all states participate in a federal-state collaboration to significantly reduce each state’s and the national UI improper payment rates.

2. References. UIPL No. 22-06; UIPL No. 3-07, Change 1; Benefit Payment Control (BPC) Technical Assistance Guide, June 1994; Improper Payment Information Act (IPIA) of 2002 (P.L. 107-300); Improper Payment Elimination and Recovery Act (IPERA) of 2010 (P.L. 111-024); Executive Order (E.O.) 13520 (November 20, 2009).

3. Background. The UI program has been designated by the Office of Management and Budget (OMB) as one of the major benefit entitlement programs with an unacceptable level of improper payments. The level of UI improper payments (overpayments plus underpayments) rose to 11.2 percent for the 2010 reporting period and continues to climb. As a result, the program is now out of compliance with IPERA, which amended the IPIA by adding new requirements. The IPERA was designed to help reduce improper benefit payments across all federal programs. Programs with improper payment rates above 10 percent are considered out of compliance which triggers additional oversight by Congress, OMB, and the Office of the Inspector General.

Before IPERA was enacted, OMB Circular No. A-123, Appendix C, *Requirements for Effective Measurement and Remediation of Improper Payments*, implemented the IPIA. The IPIA requires federal agencies to review their programs and program activities annually, identify programs and areas that may be susceptible to significant improper payments, identify programs considered to be “high risk,” and develop and implement corrective action plans for any “high-risk” programs. The UI program is among the top “high risk” programs in the federal government.

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On November 20, 2009, President Obama issued E.O. 13520, *Reducing Improper Payments*. This E.O. requires significant efforts be made to reduce improper payments by intensifying activities to eliminate payment errors, waste, fraud, and abuse in major programs administered by the federal government while continuing to ensure these programs serve and provide access to intended beneficiaries. The E.O. requires federal and state agencies to implement procedures and internal controls to ensure proper payments are made and to develop coordinated efforts in eliminating and reducing improper payments. Under the direction of OMB, agencies that have programs susceptible to significant improper payments are expected to determine the estimated amount of improper payments and the root causes of these improper payments and prioritize resources so that corrective action plans can be thoughtfully developed and successfully carried out.

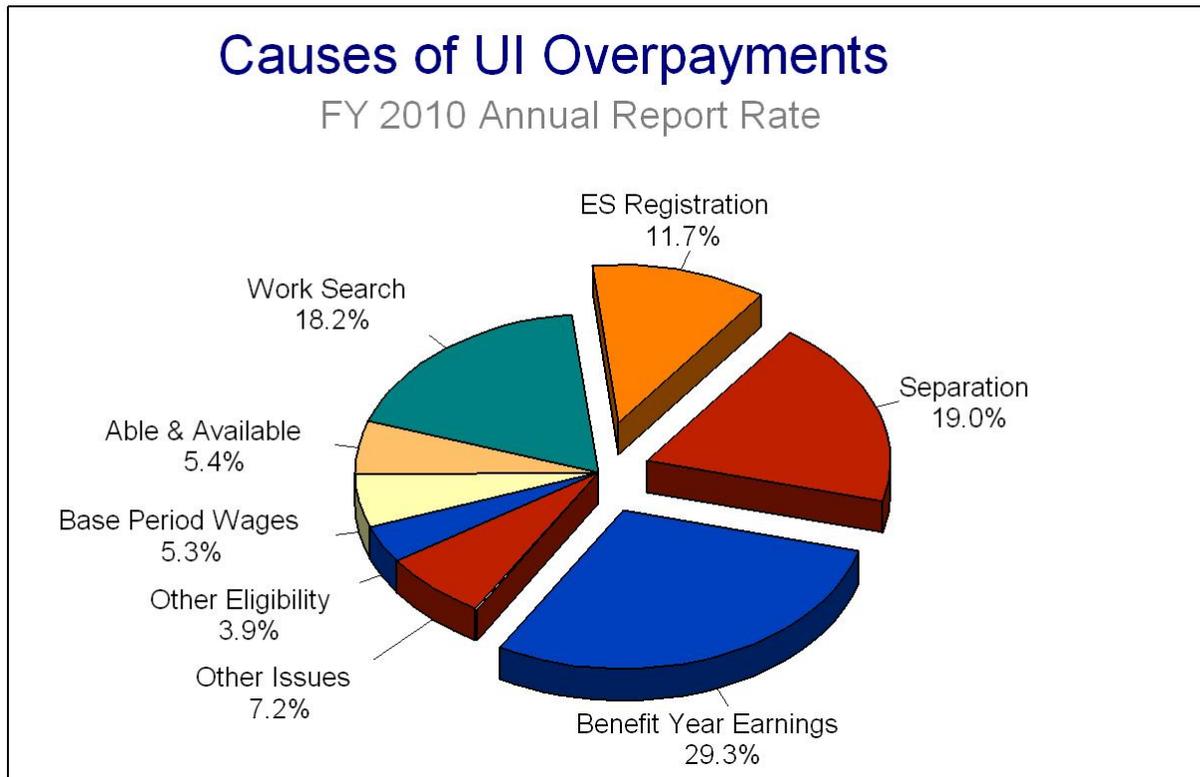
Each year, the Department is required by law to report the rate and amount of UI improper payments to OMB. The UI Benefit Accuracy Measurement (BAM) program provides the basis for assessing the accuracy of UI payments. An estimated improper payment rate for the UI program nationally and for individual states is determined through BAM audit findings based on random samples of UI weekly benefit payments. For July 2009 to June 2010, the most recent period for which BAM data was available for 2010 IPIA reporting, the estimated national improper payment rate for the UI program was 11.2 percent (10.6 percent overpayment rate plus a 0.6 percent underpayment rate) which translates to over \$17 billion in improper payments nationally. BAM results since the last reporting period show that the improper payment rate remains well above 10 percent, and the Department will be considered to be out of compliance for the 2011 reporting period.

A top priority of the Department is to work with states to take aggressive action to significantly reduce and prevent UI improper payments and to bring down the improper payment rate. The UI program is under intense scrutiny as a result of IPERA and the President's E.O., and since state workforce agencies administer the program, state action is required to reduce the UI improper payment rate. Therefore, the Department stands ready to partner with states to implement targeted strategies, develop tools, and share best practices that will prevent improper payments and reduce the improper payment rate. The Department recognizes this is a critical state issue as well, in particular, given the impact that improper payments have on states' unemployment funds. Enhanced integrity efforts will help to preserve the UI trust fund(s), control UI tax rates, and maintain the public trust that the program is being protected and administered properly.

4. Scope of the Problem. The entire UI system, including federal and state partners responsible for administering the program, has a longstanding commitment to program integrity. The system uses sophisticated sampling and audit methods as well as various tools to prevent, detect, and recover improper UI benefit payments; however, the UI improper payment rate has increased during the recession.

The four main causes for UI improper payments include: 1) payments made to claimants who continue to claim benefits after returning to work and fail to report (or under-report) their earnings, often referred to as Benefit Year Earnings (BYE), (29.3%); 2) untimely and/or incomplete job separation information (for example, states may receive important information about claimants' separation from work after the issues have been adjudicated and the claims paid, due to the failure of the employers or their third party administrators to provide timely and complete information on the reason for the individuals' separation from employment (19.0%);

3) the state’s inability to validate that claimants have met the state’s work search requirements (18.2%); and, 4) claimants’ failure to register with the state’s Employment Service as required by state law or the agency’s failure to process Employment Service registrations (11.7%).



Other root causes of UI improper payments that are less controllable or that are cost prohibitive to prevent overpayments include:

- “Able and Available” Requirements (5.4%) – payments made to claimants who are unable to work or unavailable for work (for example, an individual who is in the hospital or in jail), which would disqualify them from receiving UI benefits;
- Base Period Wages (5.3%) – payments made that are based on incorrect base period wages (for example, wages may be over-reported or under-reported due to employer error(s) or automation error(s)), causing claimants to be determined eligible for more or fewer benefits than they were entitled to receive.

This UIPL focuses primarily on approaches to reducing improper payments caused by benefit year earnings, separations, and employment service registration (numbers 1, 2, and 4 above).

5. Improper Payment Prevention. Reducing the improper payment rate requires the UI system to focus on preventing improper payments before they occur. Detection and collection activities continue to be critical core integrity activities, but the best way to effectively reduce the improper payment rate is to prevent improper payments before they occur. To accomplish that goal, ALL state UI staff responsible for the operation of the program must be engaged in a coordinated effort to address improper payments at all levels of the program. Agency staff must be aware of the causes of improper payments and what their role is regarding overpayment prevention. Integrity programs must be designed to discourage fraud and uncover potential

issues of fraud at the earliest possible time. Essentially, everyone owns program integrity and everyone must help to create and cultivate a culture of integrity throughout the entire UI system.

Workforce system partners also have a responsibility to help in the effort to lower the UI improper payment rate by working collaboratively with UI program staff. Workforce system partners help UI claimants meet Employment Service registration requirements. Claimants are provided comprehensive services upon reporting to One-Stop Career Centers when they are referred to services through the Worker Profiling and Reemployment Services program (after being determined likely to exhaust their benefits) or when they are referred to services through the Reemployment and Eligibility Assessment programs. Good communication between UI and One-Stop Career Center staff is needed to ensure the integrity and effectiveness of these programs.

6. Strategic Plan for Reducing the Improper Payment Rate. The Department is focusing on three specific improper payment root causes for immediate action and overpayment reduction. These three types of overpayments result in the highest dollar amounts and lend themselves to targeted prevention efforts.

Benefit Year Earnings - The primary cause of overpayments is due to unreported or under-reported earnings by claimants while they claim benefits. Cross-matching with State Directories of New Hires (SDNH) and National Directories of New Hires (NDNH), followed by immediate contact with the claimant when there is a match to let the claimant know there is a potential overpayment, is considered to be one of the most effective strategies for addressing this root cause.

Separation Issues - Overpayments attributable to separation issues are the second leading cause of overpayments. To address this issue, the Department worked collaboratively with states to develop the technology solution called the *State Information Data Exchange System (SIDES)*, which enables more rapid and accurate communications between state agencies and employers or employers' third party administrators. The timely exchange of accurate claimant separation information should result in better determinations and is expected to reduce the number of improper payments to claimants who are determined to be ineligible for UI due to disqualifying job separations such as quitting a job without good cause or being discharged for misconduct under the state UI law. A number of states are in varying phases of SIDES implementation and rapidly getting all states to use SIDES is a high priority for the Department. Similarly, the Department is developing outreach and marketing tools for states' use with employers and their third party administrators to gain their participation in SIDES.

Employment Service Registration - Improper payment errors due to a claimant's failure to meet Employment Service registration requirements are a significant root cause of improper payments in some states. Efforts are underway in many of these states to correct these types of improper payments, and the Department continues to closely work with these states and provides technical assistance, where appropriate.

The Department has collaborated with the National Association of State Workforce Agencies to form a federal-state Integrity Workgroup to develop and implement a national action agenda for reducing overpayments. Through collaborative efforts with states, including the members of the federal-state Integrity Workgroup, the Department has developed a strategic plan to reduce the

UI improper payment rate. The strategic plan's action items are designed to focus primarily on prevention of the three root causes of improper payments previously discussed.

Over the course of the coming year, the Department will undertake a number of new strategies as part of the overall plan to reduce UI overpayments. These include:

- Mandating the use of NDNH in state BPC operations and dissemination of a recommended operating procedure to ensure optimal results (see Section 7 and the attachment to this UIPL);
- Implementing a campaign to target messages to claimants designed to prevent improper reporting of work/earnings while filing for UI and to promote compliance with state work search requirements;
- Collaborating with “high impact” states (which are essentially big states) to pilot implementation of UI improper payment cross-functional task forces to develop and implement state specific action plans to reduce improper payments and to provide some leadership nationally with other states to support reduction of improper payments;
- Encouraging all states to implement cross-functional task forces to develop and implement state specific action plans to reduce UI improper payments;
- Offering states the opportunity to apply for Supplemental Budget Requests (SBR) targeted to the specific root causes and strategies discussed in this UIPL;
- Implementing a new improper payment performance measure aimed at reducing fraud overpayments due to claimants who continue to file for benefits (generally, for five weeks or more) after they have returned to work;
- Reintroducing to Congress the federal *Unemployment Compensation Integrity Act of 2011* with additional provisions aimed at reducing the overpayment rate;
- Aggressively promoting increased state and employer participation in the use of SIDES to reduce improper payments due to untimely and/or inaccurate or incomplete information used to adjudicate job separation issues;
- Developing outreach and marketing tools for states to use with businesses and their third party administrators to promote their participation in SIDES;
- Modifying the State Quality Service Plan process to add a section for states to describe their efforts to reduce improper payment rates;
- Identifying and disseminating integrity “best practices;”
- Exploring methods to ensure sufficient state resources will be targeted toward integrity activities;

- Exploring and piloting new data sources such as banking information to identify when claimants may have returned to work; and
- Planning a *National Integrity Summit* in the spring of 2012.

7. Mandatory Use of NDNH. For several years, the Department has encouraged states to use the NDNH to reduce improper payments in the UI program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 mandated the development of the State and National Directories of New Hires. These new hire directories, originally created for the purpose of child support enforcement, have allowed UI agencies improved access to wage data and new hire information that was previously unavailable. NDNH also contains data on federal civilian and military wages and new hires reported by multi-state employers to a state other than the state conducting a match. These data may also be used for “skip-tracing” to locate individuals who may have relocated and have outstanding overpayments. Studies of the use of NDNH have concluded that use of this tool results in earlier detection of improper payments, thus, preventing future overpayments and increasing the likelihood of overpayment recovery.

The use of NDNH for BAM was mandated beginning the week of December 30, 2007 (See UIPL No. 3-07, Change 1).

The mandatory use of NDNH is based on the Department’s authority granted under Section 303(a)(1) of the Social Security Act and Sections 3306(h) and 3304(a)(4) of the Internal Revenue Code. To achieve an overpayment rate below 10 percent, it is critical that NDNH be used by the states to quickly detect BYE overpayments. All states will be required to conduct NDNH cross-matches by December 2011. States are encouraged to begin matching sooner, if possible. Recommended Operating Procedures (ROP) are attached to this UIPL, which outline best practices in conducting NDNH and SDNH cross-matches, including procedures reported by states to be effective for both detecting as well as preventing overpayments. We strongly encourage states to implement these procedures immediately. As additional effective procedures and best practices are identified and documented, an enhanced ROP will be disseminated to states.

8. Next Steps. All states are strongly encouraged to take action immediately to reduce the state’s improper payment rate. States are requested to take the following steps:

- Conduct weekly and daily cross-matches with NDNH and SDNH respectively. When cross matches result in a match, states should have automated processes to immediately notify UI claimants that the state has received information indicating they have returned to work and that an overpayment may exist. The appropriate employer(s) should also be immediately contacted to verify the employment and wage information.
- Review the wording of the state’s continued claims certification form or telephone script to assess whether any questions or language should be made clearer to ensure claimants understand what is being asked. For example:
 - If the certification form or script contains a two-part question such as:
 - *Did you work and earned wages during the week?*
 - Two separate questions could be asked instead such as:
 - *Did you perform any work during the week?*

- *If you worked, what was the amount of wages you earned during the week (report wages earned whether or not these wages have been paid)?*
- **Implement SIDES as quickly as feasible.** The Department will continue to provide technical assistance to states in implementing SIDES including providing funding opportunities. When the SIDES earnings verification application becomes available, technical assistance will also be provided for its implementation.
- **Implement a cross-functional integrity task force.** The Department will be working with the “high impact” states to pilot the use of a task force in effectively reducing improper payments and developing effective overpayment prevention methods and tools, however all states are encouraged to form a cross-functional task force. States are asked to think broadly about the types of UI functions and staff that need to be represented on a state task force including front line claims takers, adjudicators, BPC and BAM staff, information technology staff, appeals staff, and tax staff. The goal is to develop a system-wide approach to bringing down the state’s UI improper payment rate. The focus in the short term of this task force should be the three root causes discussed as priorities in this UIPL.

The Department will continue to engage with states as the strategies described in this UIPL are implemented, and it is anticipated that there will be opportunities to offer a wide array of technical assistance including webinars and newly developed tools to support state efforts.

9. Action Requested. State Administrators are requested to provide the information contained in this UIPL to the appropriate staff. Outreach efforts should be made to inform all UI and workforce staff, employers, and the general public of the strategic plan to ensure everyone understands the importance of maintaining program integrity and protecting UI funds.

10. Inquiries. Questions should be addressed to the Department’s appropriate Regional Office.

11. Attachment. Recommended Operating Procedures for Cross-Matching Activity: National and State Directories of New Hires