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TO: STATE WORKFORCE AGENCIES

FROM: ERIC M. SELEZNOW /s/
Acting Assistant Secretary

SUBJECT: Benefit Accuracy Measurement (BAM) Investigative and Coding Guidance

1. **Purpose.** To update ET Handbook No. 395, 5th Edition, to include BAM standards for exhaustive attempts to obtain claimant information and to establish guidelines for coding errors when claimants fail to respond.

2. **References.**

- Improper Payments Information Act of 2002 (IPIA) (Public Law (Pub. L.) 107-300), as amended, 31 USC 3321;
- Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96); Sec. 303(a) [42 U.S.C. 503] of the Social Security Act;
- 20 CFR Part 602 – Quality Control in the Federal-State Unemployment Insurance System;
- Unemployment Insurance Program Letter (UIPL) No. 04-01, *Payment of Compensation and Timeliness of Determinations during a Continued Claims Series*; and
- ET Handbook No. 395, 5th Edition, *Revisions to the State Operations Handbook for the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program* (BAM State Operations Handbook) (OMB number 1205-0245).

3. **Background.** BAM is established under 20 CFR Part 602 – Quality Control in the Federal-State Unemployment Insurance System (Attachment B). Section 602.21(c)(4) of 20 CFR requires the BAM program to “conclude all findings of inaccuracy as detected through QC [quality control] investigations with appropriate official actions, in accordance with the applicable State and Federal laws; make any determinations with respect to individual benefit claims in accordance with the Secretary's ‘Standard for Claim Determinations—Separation Information’ [in the Employment Security Manual].”

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The BAM program (formerly called Benefits Quality Control) is designed to determine the accuracy of paid and denied claims in three permanently authorized unemployment compensation programs: State Unemployment Insurance (UI), Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). To accomplish this, the BAM program uses a standard questionnaire, conducts new and original fact finding or verifies existing facts from original sources, and reviews existing records to reconstruct the entire claims process leading up to a randomly selected payment made for a given compensated week. In the BAM program, this sampled week is known as the “key week.” To evaluate the accuracy of each key week, the BAM program investigates the UI claimant's monetary and separation eligibility, as well as all information relevant to the compensated week. The review process includes evaluating availability for work, efforts to find suitable work, and earnings from casual employment or other income sources, such as Social Security or pensions.

A recent analysis of state data revealed significant inconsistency in the coding of paid claims cases for which the claimant did not respond to the questionnaire provided by the state BAM unit. These inconsistencies have generated concerns about whether BAM units are complying with state law, administrative code/rules, and official policy in instances of claimant nonresponse, and whether BAM investigators are obtaining necessary information to determine eligibility.

In Calendar Year (CY) 2011, 1,573 claimants failed to respond to the BAM questionnaire. This represented a little over 6.3 percent of the 24,677 paid claims sampled. State claimant nonresponse rates ranged from less than 1 percent to nearly 13 percent. In CY 2012 BAM cases, 1,838 or almost 7.6 percent of the claimants did not complete the questionnaire for the 24,317 paid claims investigated, with a range of slightly more than 2 percent to nearly 20 percent. In instances where the claimant failed to complete the questionnaire (excluding eligibility issues identified through verification with other sources), the following coding was observed:

- Work search overpayments for claimants who are required to conduct an active work search and who fail to provide work search contacts for the key week:
 - CY 2011 – 136 of the 1,255 non-respondents who were required to conduct an active work search were held ineligible or provided a formal warning for failure to meet the state work search requirements in the key week; and
 - CY 2012 – 117 of the 1,478 non-respondents who were required to conduct an active work search were held ineligible or provided a formal warning for failure to meet the state work search requirements in the key week.

- Overpayments for failure to report if the claimant does not return a completed questionnaire:
 - CY 2011 – 34 of the 1,573 non-respondents were held ineligible for failing to be available for work or for other causes related to eligibility; and
 - CY 2012 – 30 of the 1,838 non-respondents were held ineligible for failing to be available for work or for other causes related to eligibility.

- No improper payment issues based solely on the claimant’s failure to complete the questionnaire:
 - CY 2011 – 924 of the 1,573 non-respondents had no improper payment for the key week; and
 - CY 2012 – 1,126 of the 1,838 non-respondents had no improper payment for the key week.

These coding outcomes in part result from different state legal requirements. To reflect different state policies, BAM estimates are normally published with the following statement:

“Readers are strongly cautioned that it may be misleading to compare one state's payment accuracy rates with another state's rates. No two states' written laws, regulations, and policies specifying eligibility conditions are identical, and differences in these conditions influence the potential for error. States have developed many different ways to determine monetary entitlement to UI. Additionally, nonmonetary requirements are, in large part, based on how a state interprets its law. Two states may have identical laws, but may interpret them quite differently. States with stringent or complex provisions tend to have higher improper payment rates than those with simpler, more straightforward provisions.”

However, the observed inconsistencies are in part the result of differing BAM unit standards being applied to obtain information.

In addition, we have observed instances in which state BAM units have failed to follow their laws, rules, and policies in assessing claimant work search eligibility outcomes or evaluating state compliance with legal mandates. In other words, BAM units applied eligibility determination standards to key week audits that differed from state policies for handling similar situations outside of BAM. BAM is therefore not complying with several provisions of regulation 20 CFR Part 602, which prescribes the requirements of the BAM program, including:

- The regulation in 20 CFR 602.21(c)(2) requires states to use standard [paid and denied] questionnaires prescribed by the U.S. Department of Labor (Department) and require claimant completion of it in accordance with the eligibility and reporting authority under state law.
- The regulation in 20 CFR 602.21(c)(4) requires each state to conclude all findings of inaccuracy as detected through BAM investigations with appropriate official actions, in accordance with the applicable State and Federal laws, and make any determinations on individual benefit claims in accordance with the Secretary's “Standard for Claim Determinations—Separation Information” in the Employment Security Manual.
- The regulation in 20 CFR 602.21(d) requires each state, in accordance with the BAM

State Operations, to classify benefit case findings resulting from BAM investigations as: (1) proper payments, improper payments, underpayments, or overpayments, in benefit payment cases, or (2) proper denials, improper denials, or underpayments in benefit denial cases.

- The regulation in 20 CFR 602.20 requires that “[e]ach State shall establish a QC [BAM] unit independent of, and not accountable to, any unit performing functions subject to evaluation by the QC unit. The organizational location of this unit shall be positioned to maximize its objectivity, to facilitate its access to information necessary to carry out its responsibilities, and to minimize organizational conflict of interest.”

Furthermore, in the vast majority of state benefit processes, claimants maintain almost absolute control to report work search contact information for a given week. Because of this, when a claimant fails to respond to a work search verification request contained in the questionnaire, many BAM units argue that they have no information to counter the claimant’s weekly certification, or they insist that the failure to provide work search information is a reporting issue that does not apply to the specific week requested. It is not clear that this stance is always consistent with state determination policy. Also, states assert that a claimant’s failure to complete and return work search record information in question 42 of the questionnaire does not establish that the claimant failed to meet work search eligibility requirements of maintaining a log or record and providing the log for verification when requested. A few BAM units have indicated that they do not have access to all agency information to determine facts of the case.

To address these and other operational inconsistencies, the Employment and Training Administration (ETA) is now updating ET Handbook No. 395 with the intent to increase claimant response to the BAM questionnaire, minimize differences in BAM coding when a claimant fails to respond to BAM unit requests for information, eliminate eligibility determination standards which are inconsistent with state law, administrative code/rule, and policy, and clarify ETA’s expectations that in order to receive administrative grants states must comply with 20 CFR Part 602, Subpart C – State Responsibilities, and the standardized procedures and methodology provided in the ET Handbook No. 395.

ETA issued the BAM State Operations Handbook¹ (as directed under 20 CFR 602.30) to promulgate standardized methods and procedures. This Handbook establishes the BAM investigative and coding standards which states must follow (under 20 CFR 602.21(a)). These include the requirement for completing the claimant questionnaire, conducting interviews, and obtaining the necessary information to determine whether the key week payment or denial was proper or improper. This means the investigator must ensure that: 1) all issues have been identified; 2) all issues have been pursued to a supportable conclusion; 3) all issues identified have been properly resolved; and 4) the required BAM methodology and all procedures have been followed. The findings of each BAM investigator must be consistent with laws, official rules, and written policies of the State Workforce Agency (SWA), and all conclusions about key week payment inaccuracy or improper denial must be

¹http://wdr.doleta.gov/directives/attach/ETHandbook_395_Ch5_acc.pdf, November 2009

formalized in official agency action if errors are found, except where prohibited by SWA finality provisions.

4. **Procedures for Exhausting All Attempts to Obtain Claimant Information and Coding BAM Cases When the Claimant Fails to Complete the Questionnaire.** In order to maintain the standard methods and procedures required by 20 CFR 602.21, state BAM operations must comply with the procedures in Attachment A to exhaust all attempts to obtain claimant information (including requesting a work search log) and detail the course of action or steps to follow when the claimant fails to return the BAM questionnaire. The BAM State Operations Handbook is updated to include the attached guidance.

5. **Action Requested.**

1. State Administrators are requested to provide this guidance to appropriate staff. With this issuance, any ETA guidance provided to the states, which is contrary to this UIPL, its attachments, and the BAM State Operations Handbook as updated is rescinded.
2. BAM units are to insert Attachment A of this UIPL into the ET Handbook No. 395, following page VI-13.
3. The Middle Class Tax Relief and Job Creation Act of 2012 amended Section 303(a) of the Social Security Act to require the State's administrative functions ensure payment when due by including "(12) A requirement that, **as a condition of eligibility for regular compensation for any week** [emphasis added], a claimant must be able to work, available to work, and actively seeking work." The law also included a mandated effective date. "(b) Effective Date- The amendment made by subsection (a) shall apply to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act" (February 22, 2012). Therefore, we strongly encourage states to assemble and review their reporting requirements and work search verification standards for internal consistency and the requirements' application to eligibility determinations. However, the state or the BAM unit must not use a work search or reporting eligibility policy that applies only to claimants selected for BAM investigations.
 - a) Specifically, a state must ensure that its reporting and work search verification requirements address ineligibility/eligibility determinations in instances where a claimant fails to report and provide work search information and/or logs for a specific compensated week requested. Adjudication requirements should clearly address potential determination paths:
 - i. Is the claimant required to provide tangible evidence of active work search or work search log when requested?
 - ii. Is the claimant held ineligible for a specific verification week requested when the claimant fails to report and provide the work search information and/or log requested (reporting issue or work search issue for the verification week)?
 - iii. Is the individual held ineligible for future benefits due to failure to report and/or provide work search information and/or log?

- iv. How does the state treat an individual who subsequently reports after a period of reporting ineligibility and establishes that they are willing to meet all future work search requirements?
 - v. How is the original requested verification week's payment status treated if the claimant is allowed to return to active filing status when the individual does not or cannot provide work search information for that given week?
 - b) BAM units must have access to current requirements to determine payment accuracy. BAM units must conclude and record all key week investigative findings of inaccuracy with appropriate official actions in accordance with the applicable state requirements.
 - 4. Additionally, BAM units must receive appropriate training to ensure they are aware of and are complying with state requirements.
 - 5. State administrators must ensure that BAM units are adequately staffed to complete the programs investigative requirements, including pursuing work search verifications.
6. **Inquiries.** Questions should be directed to the appropriate Regional Office.
7. **Attachments.**

Attachment A. Procedures for Exhausting All Attempts to Obtain Claimant Information, Capturing Work Search information, and Coding BAM Cases When the Claimant Fails to Complete the Questionnaire or provide Work Search Logs

Attachment B. 20 CFR Part 602 - Quality Control in the Federal-State Unemployment Insurance System