

15. 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.

In order to maintain the standard methods and procedures required by 20 CFR 602.21 of the regulation, state BAM operations must comply with the following requirements to exhaust all attempts to obtain claimant information and detail the course of action or steps to follow when the claimant fails to return the BAM questionnaire.

1. BAM investigators must first attempt to complete the questionnaire according to normal procedures. This may be by in-person, phone, mail, fax, or email and should involve at least two normal attempts to contact the claimant. To allow for reasonable claimant response times, these contact attempts must occur on different days of the week and at different times of the day. BAM investigators must document dates, times, and methodology of these attempts to obtain claimant response. The BAM unit may establish an open or indefinite period of ineligibility for a failure to respond during this period, consistent with state law, administrative code/rule and policy and response standards established in the BAM State Operations Handbook (p. VI-2). In any given year, if the BAM unit's nonresponse rate is more than double the national average, then the state's BAM unit must undergo corrective action, which must include a review of state procedures, staff allocation and/or diversion of BAM staff, and BAM program funding.

If the state requires as a condition of eligibility that the claimant maintain and provide a work search log/record or other work search documentary evidence when requested, then BAM units must request the claimant's log/record or other documentary evidence as part of the BAM investigative procedures. BAM units must verify claimants' compliance with the state's log/record or evidence maintenance requirement in addition to completing the verification standards for work search contacts and activities as established on page VI-6 of the BAM State Operations Handbook. Requiring the claimant to complete question 42 (Work Search Contacts/Activities) is not the same as auditing whether the individual actually documented work search as required by the state's law, administrative code/rule, and policy. The claimant's submission of the state-required work search log/record may be used in lieu of completing question 42. The case file must contain a copy of the claimant's work search log/record or other documentary or its absence must be addressed in the case findings.

When a claimant responds, BAM units must, in determining eligibility, apply state policy when evaluating whether the numbers of key week contacts and or activities made by the claimant were sufficient to fulfill the requirement for the week. State policy controls whether certain types of activities may be substituted for an employer contact(s). However, the state or the BAM unit must not develop a work search or reporting eligibility policy that only applies to claimants selected for BAM investigations. If the state allows other activities to substitute for employer contacts, BAM units must record activities as part of the contacts listed in the g10, g12, g13, g14, and g15. Finally, when state policy requires a claimant to report and to provide information or a work search log for any previously compensated week as a condition of eligibility for the specific compensated week requested or be determined ineligible, BAM units must apply the same standard to the key week as a reporting or work search error consistent with that policy.

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BAM investigators must make an exhaustive effort to verify the work search contacts provided by the claimant with the employer. An exhaustive effort is defined as three attempts to obtain contact verification from the employer. To allow for reasonable employer response times, these contact attempts must occur on different days of the week and at different times of the day. This must include escalating requests to higher authority of the employer (e.g. managers or corporate officers). Verification contact attempts must be recorded on an employer contact log in the case file.

BAM units must record all errors affecting the key week payment accuracy (multiple errors on the key week which are based on separate sets of facts and causes).

2. If the claimant fails to complete or return the BAM program questionnaire (including providing the work search log) when requested after two normal contact attempts, then BAM investigators must make a third and **final attempt** to obtain the claimant's information. The BAM unit must send (via mail, fax, or e-mail) a letter requesting that the claimant return the completed questionnaire and log (if applicable) within the time period prescribed by state law and policy for reporting information relevant to the claimant's eligibility for unemployment compensation. If no time period is provided in state law and policy, the BAM unit must require that the claimant return the questionnaire within ten business days from date of final transmission by the BAM unit.

3. Consistent with the "Standards for Claim Determinations" and the claimant questionnaire header, the BAM final attempt letter must inform claimants that the information obtained from the investigation may affect their eligibility for benefits and that failure to complete the questionnaire may result in delay or denial of benefits in accordance with the reporting requirements of the state. The letter must include appropriate references to state law, administrative code/rule, and written policy, and the potential consequences for failing to provide the response by the specified due date. A copy of the dated letter must be included in the case file.

4. If the claimant fails to return the questionnaire after the third and final attempt response time period, then consistent with 20 CFR 602.21 and the BAM State Operations Handbook (pp. VI-2, VI-3), the BAM unit **must** treat the failure to complete the questionnaire as a condition of continuing eligibility for future benefits "in accordance with the eligibility and reporting requirements in State law." (20 CFR 602.21(c)(2)) In at least some states, state law or policy provides for an open or indefinite period of denial for the failure to report and/or provide information when directed. If the state law or policy allows for such a determination then it must be applied in this situation.

The BAM case file must contain a copy of the denial determination issued in this step. During the current benefit year the BAM unit and/or the SWA **must not** remove the open or indefinite period of ineligibility until the claimant responds and completes the questionnaire and/or provides the documentation necessary for BAM to complete fact-finding.

However, if the claimant does respond and complete the questionnaire before the final case

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completion date of October 28 of the following end of the reporting year, then the BAM unit must reopen (code 9) the case, pursue and resolve any new issues identified, and update the case coding. This includes updating element (b1) to reflect the claimant response.

5. BAM investigators must complete all other new and original fact finding for the audit and obtain information from SWA records, employers, and third parties (for example, unions and employer agents), and must document and code any improper payment issues identified. Examples include benefit year earnings issues identified through matches with the National or State Directories of New Hires, separation issues, base period wage issues, Employment Service registration issues, refusal of suitable work, and dependents' issues.

6. At the conclusion of all other investigative action, the BAM investigator must, consistent with 20 CFR 602.21(c)(4), determine whether the claimant has met the work availability, active work search, and/or reporting eligibility requirements of state law, administrative code/rules, and official policy. Failure to respond is not **by itself** sufficient for BAM units to establish a work search or reporting ineligibility for the key week. Such a key week work search or reporting ineligibility determination must be based on state law, administrative code/rules, and policy. Official policy includes SWA work search adjudication guidelines and appeal/legal precedents. Official policy must be applied to all claimants in similar eligibility determination circumstances.

This determination of key week eligibility includes evaluation of claimant compliance with the state's requirements to provide the work search log/record for a specific week requested and all other information available to the SWA at the conclusion of the BAM investigation.

If it is consistent with state policy, BAM units must use any work search information provided by the claimant as part of the SWA's Web- or telephone-based continued claims filing systems or participation in employment services for the key week to evaluate whether the claimant has met the state's active work search requirements. BAM investigators must record this information in elements g10, g12, g13, g14, and g15. If the state requires a minimum number of contacts be made each week and telephone filing or web-based continued claims system does not capture the number of contacts made or information about the contacts the claimant made, then BAM units must not assume that the claimant met the state's numeric contact requirements. In other words, the BAM unit may not assume that a claimant has met the state's numeric contact requirements unless it has evidence, from the claimant or other sources, that the claimant has actually made the required number of contacts.

BAM programs will use Key Week Action code 14 **only if** the state has a formal warning provision in state law or, administrative code/rules, and/or written policy, and the SWA issues formal warnings to claimants as part of its routine work search verification procedures (that is, formal warnings must be applicable to **all** paid claims, not only BAM audits). (As noted on page VI-4, written policy is that policy that is distributed SWA wide and upon request may be made available to the public.) BAM investigators must include a copy of the formal warning in the file and cite the state authority for issuing the formal warning in the case summary.

7. As provided by 20 CFR 602.21(c)(4), ET Handbook No. 395 requires that all conclusions pertaining to the key week or denial, that are drawn from the BAM investigative process, must be

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formalized in official agency actions if errors are found, except where prohibited by SWA provisions such as finality [Chapter VI, Section (3)(g)].

A BAM unit must refer any key week eligibility issue(s) arising under guideline 6 above with respect to the claimant's failure to report and provide documentation that the claimant has met state work search requirements for official action by the state's UI adjudication unit. The BAM referral must include a copy of the final contact request letter (with attachments) and include the copy of the claimant contact log showing the dates methods and times of the previous three attempts to obtain the claimant's completion of the questionnaire and work search log/record. Consistent with UIPL No. 04-01, the adjudication unit must issue determinations on key week work search and nonresponse compliance based on the facts provided by the BAM unit within 14 days of the BAM referral date, or conduct and complete new and original fact-finding for key week work search or reporting compliance and issue a determination within 14 days of the BAM referral date. Based upon state law, administrative code/rules, and written policy, work search compliance must be evaluated for the key week. However some states, based upon state law and written policy, may apply nonresponse sanctions to the key week, and other states may apply sanctions to the week the failure to respond occurred.

This referral process should not result in a significant increase in adjudication unit workload. Based on CY 2011 results, an average of 30 cases per state each year will be referred to adjudication, ranging from one to 62 cases in the state with the highest claimant nonresponse.

8. Final coding must reflect adjudication unit's official action for the key week work search and reporting issues referred by BAM program in guideline 7. If the adjudication unit disagrees with the BAM unit's determination and declines to establish an overpayment, and BAM does not agree with the agency's official action, then the BAM unit must document the disagreement in the case file and use either code 16 (for an overpayment) or 23 (for an underpayment) indicating that BAM disagrees with the official action.

16 = Overpayment established or Weekly Benefit Amount (WBA), Key Week Dependent's Allowance (KWDA) entitlement, Maximum Benefit Amount (MBA), or Remaining Balance (RB) decreased which was later "officially" reversed, revised, adjusted, or modified and BAM disagrees with "official" action (e.g., Appeals unit reverses BAM determination and BAM disagrees).

23 = Supplemental check issued/offset applied which was later "officially" reversed, revised, adjusted, or modified, and BAM disagrees with the "official" action (e.g., Appeals unit reverses BAM determination and BAM disagrees).

Note that code 16 and 23 issues are not included in the Annual Report overpayment or underpayment rates reported under the Improper Payment Information Act of 2002, as amended (Pub. L. 107-300).

9. The BAM supervisor may close the case upon completion of all other issues and data collection. When the adjudication of the issues referred by the BAM unit for official action has

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been completed, the BAM unit must reopen the case to complete coding of the adjudicated issues, using reopen code 9, which will not affect time lapse.

10. If the SWA's adjudication unit does not issue determinations on the work search and/or key week reporting eligibility issue within 90 days of the referral date and the case has been closed, the BAM unit must include a copy of the referral in the case file and include a notation in the summary that the SWA did not take action on the work search and/or reporting issue(s) identified.