

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 26-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Unemployment Insurance (UI) Supplemental Funding Opportunity for Program Integrity and Performance and System Improvements

1. Purpose. To notify State Workforce Agencies of the availability of Fiscal Year (FY) 2011 funds for activities, including technology-based activities, that will support the prevention, detection, and collection of improper UI benefit payments, improve state performance, and address outdated Information Technology (IT) system infrastructures necessary to improve UI program integrity.

2. References. Improper Payment Information Act of 2002 (IPIA; P.L. No. 107-300); Improper Payment Elimination and Recovery Act (IPERA; P.L. No. 111-204); Executive Order (E.O.) 13520, "Reducing Improper Payments" (November 20, 2009); Unemployment Insurance Program Letter (UIPL) No. 31-09, Change 1, "UI Supplemental Funding Opportunity for Automated Integrity Related Systems, Including Systems to Improve Services and/or Performance"; UIPL No. 17-11, "Proposed Performance Measure for Unemployment Insurance (UI) Integrity"; UIPL No. 19-11, "National Effort to Reduce Improper Payments in the Unemployment Insurance (UI) Program"; Employment and Training Administration Handbook No. 336, 18th Edition, Change 2, "Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines."

3. Background. On November 20, 2009, E.O. 13520, *Reducing Improper Payments*, was signed by President Obama. It emphasized the need to eliminate fraud, waste, and abuse in federally administered programs while protecting access to these programs by their intended beneficiaries. Subsequently, the IPIA, as amended by IPERA, required federal agencies to review their programs and program activities annually, identify programs and areas that may be susceptible to significant overpayments, and develop and implement corrective action plans for any "high-risk" programs. The UI program has been identified as a "high-risk" program. Under the IPIA, an agency which reports an improper payment rate above 10 percent for a program it administers, will be determined to be out of compliance and will trigger oversight by Congress, the Office of Management and Budget and the Office of the Inspector General. The UI program is currently out of compliance. The UI Benefit Accuracy Measurement (BAM) program, which provides the basis for assessing the accuracy of UI payments, estimated the UI national improper payment rate to be 11.2 percent for the 2010 reporting period (10.6 percent overpayment rate plus a 0.6

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percent underpayment rate). This translates to over \$17 billion in improper payments nationally. BAM results, since the last reporting period, show that the UI improper payment rate remains well above 10 percent. Therefore, the U.S. Department of Labor (Department) and the UI program are considered to be out of compliance with IPIA requirements for the 2011 reporting period.

On June 22, 2011, in testimony before the Senate Finance Committee, Administrators from Utah and Washington State reported that modernizing UI IT infrastructures is critically important to the states' ability to implement new tools to address improper payments. The National Association of State Workforce Agencies' (NASWA) Information Technology Support Center (ITSC) reported that the average age of the states' UI IT infrastructures is 23 years, with many systems more than 30 years old. The report indicated that these aging "legacy" systems have:

- Poor agility -- integrating new technology self-service components to old mainframe systems is complex and inefficient. Changes to implement new requirements, such as those for Emergency Unemployment Compensation or Extended Benefits were difficult and time consuming;
- Minimal scalability -- increasing system capacity to handle higher claims levels was hampered by the sheer number of components that had to be added rapidly and in unison. A number of legacy systems experienced temporary system failures in 2008 and 2009 because of limited capacity to handle the significant increase in claims filed as a result of the recent recession; and,
- Inhibited productivity -- technologies that improve staff productivity and services such as document management systems, forms management, and ad-hoc reporting tools cannot be quickly or easily implemented in aging legacy systems.

The Department continues to be committed to supporting states in updating their IT infrastructures. States that have recently modernized their systems have found that the cost to design and develop a new system is, on average, about \$40 to \$50 million. The Department's budget estimates show that the cost of funding individual customized state systems, even if costs were spread over multiple years, is unaffordable in the current budget environment and that states must seek collaborative solutions to address the challenge. Therefore, this solicitation is employing a consortium strategy to fund system modernization and large technology projects.

4. Goals. On June 10, 2011, the Department issued UIPL No. 19-11, "National Effort to Reduce Improper Payments in the UI Program," to notify stakeholders that UI integrity is a top priority and to develop state-specific strategies to bring down the UI improper payment rate. The states were informed about a national strategic plan to aggressively target UI overpayment prevention and detection 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. The funding opportunities explained below are designed to assist the states in developing their own state specific strategies to reduce the improper payment rate as described in UIPL No. 19-11.

The goals of the funding for this solicitation are to:

- Accelerate significant state actions to reduce improper payment rates; and,

- Provide an opportunity for states to modernize their UI benefits and/or UI tax systems, and design and implement technology-based tools to prevent, detect or recover improper UI payments.

5. Structure of Funding Opportunity. The categories for which supplemental funds are being made available include: 1) integrity activities (core activities (required) and incentive activities); and 2) technology infrastructure consortium projects contributing to program integrity. In order to qualify for any funding, states must have already implemented, or must agree to implement, the entire set of Core Integrity Activities by the specified dates.

Section 6 of this UIPL identifies and describes the funding that is available for the Core Integrity Activities and the Incentive Integrity Activities. Core Integrity Activities are those activities that the Department believes all states should implement as part of their individual strategic plans to reduce improper payments attributed to the key root causes of overpayments. These include improper payments resulting from benefit year earnings, separations, and employment service registration. Included in section 6 is a chart showing the maximum funding amounts available for each Core Integrity Activity. Incentive funds are offered to states to implement an additional set of integrity activities, in an amount of up to \$1 million per state, contingent upon the state having already implemented, or agreeing to implement all seven core integrity activities by the dates specified.

Section 7 of this UIPL identifies and describes the technology infrastructure consortium projects that may be funded. As with the incentive activities, a state may receive these funds only if it has already implemented, or agrees to implement all the Core Integrity Activities by the dates specified below.

6. Core Integrity Activities and Incentive Integrity Activities.

Core Integrity Activities. The following are the seven Core Integrity Activities that must have been or that must be undertaken for a state to receive funding through this solicitation:

- Activities designed to achieve the new benefit year earnings (BYE) performance measure (see UIPL No. 17-11);
- Establishment of a Cross-Functional Integrity Task Force (see UIPL No. 19-11);
- Activities listed in the Recommended Operating Procedures (ROP) for conducting cross matching with the National Directory of New Hires (NDNH) and the State Directory of New Hires (SDNH), attached to and described in UIPL No. 19-11;
- Use of the State Information Data Exchange System (SIDES);
- Claimant/Employer messaging about UI program requirements;
- Employment Service Registration as required under state UI law if the state's improper payment rate is above three percent; and
- A State-Specific Solution(s) to address overpayments, including technology-based prevention, detection, and collection activities.

Incentive Integrity Activities. The Incentive Integrity Activities that a state may undertake are listed below. Only those states that have implemented, or commit to implementing, the full range of Core Integrity Activities listed above will be eligible for these incentive funds in the amount of up to \$1,000,000. Incentive Integrity Activity funds may be requested for:

- Activities to address Worker Misclassification;
- Implementation of other integrity-related projects, including technology-based prevention, detection, and collection activities;
- Implementing the SIDES earnings/wage verification and monetary and potential employer charges data exchanges;
- Subscription fees for SIDES;
- Contract staff support for Benefit Payment Control (BPC) activities (activities that do not require use of state merit staff);
- Implementation of the federal Treasury Offset Program (TOP); and
- Automation efforts that result in overall performance and system improvements.

Description of Core Integrity Activities Requirements

To qualify for any supplemental funding a state must have already implemented, or must agree to implement, all seven of the Core Integrity Activities listed above and must adhere to the **time frames identified for each activity**. (Where a state has already implemented all seven of the Core Integrity Activities, it must document this and the state would thus be able to apply for incentive funding.) Funding caps are identified for each activity, where appropriate. Each state must meet its commitment(s) in accepting these funds. A state that does not meet the conditions of the SBR grant(s) will be determined to have “disallowed costs” that would need to be repaid.

The Core Integrity Activities include:

- **New BYE Performance Measure.** Designing strategies to help the state meet the proposed new BYE performance measure which targets 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 (see UIPL No. 17-11). Implementing the Recommended Operating Procedures for the NDNH cross-match is the minimal action required to meet this commitment. States must commit to completing this activity by **December 31, 2011**. (Existing data collected from the BAM program reported in the BAM Annual Report is available to states to track the performance on this measure; therefore, no funding will be provided for this activity).
- **Cross-Functional Task Force.** Establishing a state cross-functional UI Integrity Task Force by **September 30, 2011**, to develop and implement a state strategic plan to reduce the state’s UI improper payment rate. The strategic plan must address state-specific root causes and strategies to cultivate a sense of ownership for program integrity within the entire UI system (see UIPL No. 19-11). States must commit that their task force will be operational for at least one year, and that the task force will continuously assess the state’s UI integrity functions and make recommendations for improvement. The Department plans to support states’ development of these cross-functional task forces during the summer of 2011 through webinars and other technical assistance; however, the Department will not provide states with funding to establish or support the work of these task forces.
- **NDNH Recommended Operating Procedures.** Implementing the Recommended Operating Procedures by **December 31, 2011** (see the attachment to UIPL No. 19-11) in conducting cross-matches with the NDNH (and with the SDNH). This includes

sending automated notices to claimants and, as appropriate, to employers no later than the next business day after a cross-match identifies the possibility that a claimant was working during a week claimed. Alerting claimants that the agency has information indicating they may have returned to work and that they may be overpaid is a successful practice in reducing and preventing overpayments. Additionally, it is highly recommended that states consider implementing an automated process to flag a claimant's next continued claim and require the claimant to speak to a state claims representative before filing the continued claim whenever the NDNH or the SDNH reveals a match. **(Up to \$250,000 per state is available for this activity.)**

- **SIDES Implementation.** Implementing SIDES to improve the timeliness and quality of separation information needed to adjudicate non-monetary determinations:
 - States that have yet to take steps to implement SIDES, and have not received any supplemental funds to date to do so, will be required to fully implement both the SIDES Web Services¹ and State Employer Web site (SEW) component of SIDES using these funds by **September 30, 2012** (up to \$500,000 per state);
 - States that have been provided with supplemental funding previously, but have not yet implemented any component of SIDES, will implement both the SIDES Web Services and the SEW by **March 31, 2012**. (No new funding will be provided for this activity except that **up to \$100,000 per state is available to implement the SEW if previous funding did not include the cost for the state to implement SEW**).
- **Claimant/Employer Messaging.** Implementing 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 Department's messaging products and tools (these are currently in development and will be shared with states when completed; the anticipated date of completion is September 30, 2011) and begin its campaign no later than **December 31, 2011**. States are encouraged to further develop state-specific messages or customize these products. **(Up to \$100,000 is available per state).**
- **Employment Service Registration.** 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. These changes must be completed by **April 30, 2012**. This applies **only** to those states with calendar year (CY) 2010 BAM employer service registration error rates above three percent. **(Up to \$100,000 is available per state)**. States may contact the appropriate Regional Office to confirm the state rate for CY 2010.

¹The SIDES Web Services offers computer to computer data exchange between the state agency system and employer or third party administrator (TPA) systems via the Broker. This feature may be used by the state agency to facilitate data exchanges with large employers or TPAs.

- **State-Specific Solutions by State Size.** Implementing state-specific solutions to prevent improper payments and reduce the state's improper payment rates in key root cause areas. States must identify the projected return on investment (ROI) for the proposed project and the extent to which the state will reduce its improper payment rate, i.e. identify a reduction target. These activities can include staff training, activities to reduce appeals backlogs, enhanced NDNH activities, or other activities specifically designed to prevent improper payments. Funding for these activities will be provided based on state size (see Attachment E):

Large States:	Up to \$750,000
Medium States:	Up to \$550,000
Small States:	Up to \$400,000.

States must complete implementation of state-specific solutions no later than **September 30, 2012.**

Description of Incentive Integrity Activities Requirements

Those states that have implemented, or that commit to implementing, all of the core activities listed above may qualify for additional incentive funds for up to \$1,000,000 per state. These incentive funds may be used for any of the following activities. States will be required to develop a detailed budget for these projects and identify projected program outcomes. Funds may be used for:

- Worker Misclassification activities such as enhancing UI Tax integrity activities by: 1) achieving a passing score for the new Effective Audit Measure for the CY 2010 evaluation period; or 2) implementing technology or procedures to enable the sharing of information between the state UI agency and the Internal Revenue Service (IRS) or the state UI agency and other state or federal agencies to promote the detection of employer misclassification activities. Examples of projects that would qualify for this incentive integrity activity include: active participation in the Questionable Employment Tax Practices (QETP) initiative; active and ongoing data exchange activities with the IRS (1099-MISC data); or data exchanges among state agencies as part of a state-wide task force. **Note:** states must actually exchange data in implementing these types of activities; merely being a signatory to an agreement is not sufficient to receive funding for this activity.
- Implementing additional state-specific solutions to prevent improper payments. States must identify the ROI expected for each solution implemented and project the extent to which the state will reduce their improper payment rate as a result of each solution.
- Implementing the SIDES earnings/wage verification and monetary and potential employer charges data exchanges.
- Payment of the SIDES subscription fees as administered by NASWA for up to two years. (States wishing to have funds reallocated to Maryland, which is the lead state for the SIDES consortium, should submit a letter with their submission requesting reallocation).

Note: States should contact NASWA to obtain subscription cost information. The state must include in its Supplemental Budget Request (SBR) application, a letter or a statement as follows: The [State Workforce Agency Name] requests \$XX for subscription fee costs for the State Information Data Exchange System (SIDES) and requests that the U.S. Department of Labor allocate these funds to the State of Maryland to pay for the fees that support SIDES.

- Securing contract staff to support BPC efforts, such as contacting claimants after a new hire match to conduct some initial fact-finding and/or provide instructions to claimants on their responsibility to report any employment and earnings. (**NOTE:** Such contract staff may be used for this specific purpose and for a temporary period. Contract staff may not perform any inherently governmental work or any work which is required to be carried out by state merit staff.
- Implementing the TOP to recover UI overpayments through offsets from federal income tax refunds.
- Implementing state-specific UI performance improvement projects designed to help the state achieve standards of performance under the *UI Performs* performance management system.

SUMMARY OF INTEGRITY FUNDS AVAILABLE FOR EACH STATE

STATE INTEGRITY ACTIVITY	MAXIMUM FUNDS AVAILABLE
Core Integrity Activities	
✓ New Benefit Year Earnings Performance Measure	N/A
✓ Cross-Functional Task Force	N/A
✓ NDNH Cross-match and Recommended Operating Procedures	\$250,000
✓ SIDES Implementation	\$500,000
✓ Claimant/Employer Messaging	\$100,000
✓ Employment Service Registration (applies <u>only</u> to those states with error rates above three percent)	\$100,000
✓ State Specific Solutions by State Size	\$400,000/\$550,000/\$750,000
Incentive Integrity Activities (only those states that have completed, or that commit to complete all seven core integrity activities (by dates specified) may apply)	\$1,000,000

7. Technology Infrastructure Consortium Projects. In FY 2009, the Department provided funding to two consortia through two separate grants to conduct feasibility studies for jointly developing a core UI benefit and/or tax system. The consortia states have reported that they have successfully developed functional requirements and are preparing for the development phase of a multi-state system. Based on positive outcomes from these two consortia, the Department is committed to funding additional consortia of states to identify functional

requirements, and design and develop a UI benefit and/or tax system. The products developed by the two consortia are available for use as a foundation for other consortia of states planning similar system modernization efforts.

Therefore, state consortia where all members have committed to implementing the full range of Core Integrity Activities, described in section 6 of this UIPL, will be eligible to submit proposals for UI Technology funds to:

- Develop (or modify and develop) either of the core UI Benefits or Tax and Benefit system designs, which the two state consortia recently developed (or join one of these consortia);
- Design additional core UI Benefits or Tax and Benefits systems using open source components that is also exportable to other states; and
- Implement technology-based tools designed to prevent, detect or collect/recover improper UI payments

Consortium proposals must identify a lead state agency that will be the “responsible state agency” and identify the partner states and explain the projected allocation of and fiscal responsibility for expenditures (see instructions in Attachment A). Additionally, the proposal must include a copy of signed agreement(s) by all participating states. A cover letter must be included and signed by the Administrator of the responsible state agency and it must explain the role of the participating state(s) in the project (see Attachment B). Additionally, all the participating state(s) must have met the implementation requirements for all Core Integrity Activities.

8. Application and Award of Supplemental Funds. To apply for supplemental funds, a state must submit an SBR package including an individual application for each of the core integrity activities and for each of the incentive integrity activities (see section 6) for which the state seeks funding. Each activity application will be evaluated separately. When the same expenditures are referred to in two different proposals and would be duplicated if both were funded, the state must provide a brief description in both applications explaining this duplication to ensure that the same costs are not funded twice. Each SBR package must address the status of all the Core Integrity Activities (see Attachment D).

For Technology Infrastructure Consortium projects, the lead state will submit a joint application (see section 7.) on behalf of the partner states. The proposal will clearly indicate total project costs including a breakdown of individual state costs. The Department does not anticipate that it will have adequate resources to fully fund all Technology Infrastructure Consortium project proposals. Therefore, states must indicate the minimum funds necessary (see Attachment A) to complete the proposed project(s) and must also include in their cost summary the cash or in-kind resources they are prepared to commit to the project(s). Depending on the availability of funding and number of proposals deemed eligible for funding, it may be necessary to negotiate project funding.

The one-time funds being made available for automation acquisitions must be obligated by states by September 30, 2013, and expended and liquidated within 90 days of that date. Upon written request, the Grant Officer may extend the liquidation period. An obligation of the funds by a

state by September 30, 2013, to an outside contractor (not to another state agency) allows for work supported by these funds to continue for 90 days beyond that date (but any work beyond that date would require an approved extension). Non-automation acquisition projects (such as contract staff to assist in BPC) must be obligated by December 31, 2011, and expended and liquidated within 90 days of that date unless the Grant Officer approves an extension of the liquidation deadline.

By applying for any of these funds, the state is agreeing that the proposed projects will be completed with no additional federal funding. When projects have been approved, a Letter of Award will be issued to the state(s) listing the proposals that are being funded in the SBR. It will include both the funding level for each proposal and the total funding level for the state's entire SBR. States must submit forms SF-424 (OMB No. 4040-0004) and SF-424A (OMB No. 4040-0006) covering all approved projects in the grant upon receipt of the Letter of Award.

9. Project Modifications. If, during the performance period, a state wishes to reallocate funds among categories/projects within its SBR, it must submit a new SF-424A (OMB No. 4040-0006) to the Regional Office for approval, with a copy to the National Office if the amount to be moved exceeds 20 percent of any category in the initially awarded amount for the project. The state must also submit a request for modification of the grant signed by the state's signatory authority. This information will be submitted to the Grant Officer with a request for modification of the SBR grant to reflect the requested changes. States may not elect to abandon an approved (single) project and move funds to a different project. If a state fails to complete a project, funds for that project must be returned to the Department.

10. Action Requested. State Administrators are requested to:

- Review the funding opportunities and determine whether the state will apply for any funds under this solicitation;
- Determine/Implement coordination needed between the UI program and Information Technology staff to develop a proposal(s) under this solicitation;
- Work with the appropriate Regional Office to develop an SBR that will best serve the needs of the state in enhancing program integrity; and
- Submit the state SBR by e-mail to OUI.IntegritySBRs@dol.gov by close of business on August 17, 2011, with an electronic copy to the appropriate Regional Office. **The subject line of the e-mail should include the name of the state and the title "Integrity-Related SBR 2011."**

11. Inquiries. Inquiries should be directed to the appropriate Regional Office.

12. Attachments.

Attachment A	2011 Supplemental Budget Request (SBR) Application
Attachment B	Description of Technology Infrastructure Consortium Projects
Attachment C	Unemployment Insurance Supplemental Budget Request Application Cover Sheet
Attachment D	Core Integrity Initiatives, State Status Summary
Attachment E	State Size Classifications