ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 17-11**

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Proposed Performance Measure for Unemployment Insurance
(UI) Integrity

1. Purpose. To describe and solicit comments on a proposed UI Performs Core Measure for UI Integrity.

2. References. Improper Payments Information Act of 2002 (31 U.S.C. 3321 note); Executive Order (E. O.) 13520, 74 Fed. Reg. 62,201 (November 20, 2009); Improper Payments Elimination and Recovery Act of 2010 (31 U.S.C. 3321 note); U. S. Department of Labor Fiscal Year (FY) 2010 Agency Financial Report (AFR) (November 15, 2010), http://www.dol.gov/_sec/media/reports/annual2010/2010annualreport.pdf.

3. Background. As required by the Improper Payments Information Act of 2002 (IPIA), the U. S. Department of Labor (Department) estimates and reports the annual rates and amounts of improper payments in the UI program. These estimates are based on the results of the Benefit Accuracy Measurement (BAM) survey of paid and denied UI claims in the State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX) programs.

On November 20, 2009, President Obama signed E. O. 13520, "Reducing Improper Payments." The purpose of this E. O. is "to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries." The order implements a comprehensive set of policies, including "coordinated Federal, State, and local government action in identifying and eliminating improper payments."

E. O. 13520, in part, works in tandem with the Improper Payments Elimination and Recovery Act of 2010 (IPERA), which amended the IPIA. IPERA established several criteria that Federal agencies must meet in order to be in compliance with the law, including the requirement that the agency has reported an improper payment rate of less than 10 percent for each program and

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activity to which the IPIA and IPERA apply. For the 2010 IPIA reporting period, the Department reported an improper payment rate of 11.2 percent (10.6 percent overpayment rate and 0.6 percent underpayment rate) in its FY 2010 AFR, p. 179.

Because the UI program is not in compliance with IPERA, the Department has developed a Strategic Plan that includes several initiatives to address the root causes of UI improper payments and bring the program into compliance. One element of the Strategic Plan is the development of a new performance measure under the UI Performs performance management system to address the leading cause of UI improper payments -- claimants who return to work and who continue to claim and collect UI benefits. In FY 2010, these benefit year earnings (BYE) overpayments totaled $2.1 billion, which represented 3.4 percent of total UI benefits paid and nearly 30 percent of all overpayments.

Initially, this measure would be defined in terms of the percentage of BYE overpayments due to fraud, estimated by the BAM survey. However, the Department plans to request authorization from the Office of Management and Budget under the Paperwork Reduction Act to collect data on the distribution of BYE overpayments established by state Benefit Payment Control activities by the number of weeks that were overpaid. Once this data collection has been implemented, the performance measure would be defined in terms of reducing BYE overpayments of five weeks or more.

4. Proposed Measure and Acceptable Level of Performance (ALP).

Measure Definition: Percentage of UI benefits overpaid due to BYE fraud.

Benchmark Period: The benchmark would be the state's average BYE fraud rate for the previous three calendar years (CY). This would result in more accurate estimates due to the larger samples and would smooth out year-to-year variances due to macroeconomic factors. A table of BYE fraud rates by state for the CY 2008 - 2010 baseline period is provided in Attachment A.

Acceptable Level of Performance (ALP): Reduce the percentage of UI benefits overpaid due to BYE fraud from the baseline level by 35 percent at the end of the first year of implementation and by 50 percent by the end of the second year of implementation. Performance would be measured by the BYE fraud rate, estimated by the BAM survey, rather than the amount overpaid, to control for year-to-year changes in benefit outlays. A table of ALP targets by state is provided in Attachment A.

Calculation: The measure would be calculated from BAM data using the following data elements:

- Dollar Amount of Key Week Error (BAM data element ei1 - defines the overpayment amount for the key (sampled) week of benefits)
- Key Week Action (BAM data element ei2 = 10 - defines fraud overpayments)
- Error Cause (BAM data element ei3 = 100-119 and 150-159 - defines BYE overpayments)
- Original Amount Paid (BAM data element f13 - defines amount paid to claimant in key week)

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The rate (expressed as a percentage) would be the weighted (by the number of paid UI weeks in the BAM survey population) estimate of:

$$\frac{\text{Amount overpaid due to BYE Fraud}}{\text{Amount of UI benefits paid}} \times 100$$

Performance Period: In order to include the results in the State Quality Service Plan (SQSP), the performance period would be based on BAM data for the CY. Per the BAM State Operations Handbook (ET Handbook 395, 5th edition), 98 percent of BAM cases must be completed by 120 days after the end of the CY (April 30, or April 29 in leap years). The first measurement period would be CY 2012.

Sampling Error: Because this measure would be based on sample data, the sampling error would be taken into account in determining whether a state meets its ALP.

Failure to Meet the ALP: States failing to meet the ALP would be expected to develop a Corrective Action Plan as part of the SQSP. The first SQSP performance period would be CY 2012.

Future ALPs: As states reduce their BYE fraud overpayment rates, percentage reductions for performance periods after CY 2013 would be adjusted to reflect ALPs that are cost effective for state agencies to achieve.

Data Collection Costs: Because the performance measure would initially use data collected through the BAM survey, there would be no data collection start-up costs for this performance measure.

5. Action Requested. State Administrators are requested to:

- provide the above information to appropriate staff; and
- provide comments within 30 days from the date of this advisory on the proposed definition, ALP, and method of calculation. Comments should be sent to Andrew Spisak by e-mail (Spisak.Andrew@dol.gov), fax (202-693-3975), or mail:

  Mr. Andrew Spisak
  U. S. Department of Labor
  ETA / Office of Unemployment Insurance
  200 Constitution Avenue, NW, Room S-4231
  Washington, DC 20210

6. Inquiries. All inquiries should be directed to the appropriate Employment and Training Administration Regional Administrator.

7. Attachments.

Attachment A - State baseline performance and ALP targets.
Attachment B - Benefit Year Earnings Performance Measure Technical Analysis.

State Benefit Year Earnings Fraud Rates and Acceptable Levels of Performance
Baseline Period CY 2008 to 2010

ST	BYE Fraud Rate (Percent of UI Benefits Paid)	BYE Fraud Amount Overpaid*	Percent of Total BYE Fraud Overpayments	35% Rate Reduction CY 2012	50% Rate Reduction CY 2013
AK	1.75%	$2,941,461	0.32%	1.14%	0.88%
AL	1.72%	$8,472,575	0.91%	1.12%	0.86%
AR	5.19%	$25,174,572	2.71%	3.37%	2.60%
AZ	2.96%	$20,621,815	2.22%	1.92%	1.48%
CA	2.02%	$180,019,495	19.38%	1.31%	1.01%
CO	0.64%	$5,167,189	0.56%	0.42%	0.32%
CT	1.38%	$14,086,765	1.52%	0.90%	0.69%
DC	4.47%	$7,611,013	0.82%	2.91%	2.24%
DE	2.43%	$3,880,367	0.42%	1.58%	1.22%
FL	0.78%	$18,734,665	2.02%	0.51%	0.39%
GA	0.80%	$9,704,799	1.04%	0.52%	0.40%
HI	0.10%	$335,895	0.04%	0.07%	0.05%
IA	0.06%	$388,641	0.04%	0.04%	0.03%
ID	1.77%	$5,306,623	0.57%	1.15%	0.89%
IL	1.07%	$35,695,867	3.84%	0.70%	0.54%
IN	1.51%	$19,957,187	2.15%	0.98%	0.76%
KS	1.51%	$8,065,649	0.87%	0.98%	0.76%
KY	0.67%	$4,941,035	0.53%	0.44%	0.34%
LA	7.27%	$26,891,993	2.89%	4.73%	3.64%
MA	1.26%	$26,928,388	2.90%	0.82%	0.63%
MD	2.05%	$18,253,682	1.96%	1.33%	1.03%
ME	0.72%	$1,486,522	0.16%	0.47%	0.36%
MI	0.74%	$19,443,703	2.09%	0.48%	0.37%
MN	1.18%	$13,414,613	1.44%	0.77%	0.59%
MO	2.09%	$16,879,423	1.82%	1.36%	1.05%
MS	3.34%	$8,371,203	0.90%	2.17%	1.67%
MT	0.50%	$660,194	0.07%	0.33%	0.25%
NC	1.79%	$36,152,567	3.89%	1.16%	0.90%
ND	0.93%	$643,910	0.07%	0.60%	0.47%
NE	1.18%	$1,853,650	0.20%	0.77%	0.59%
NH	1.15%	$2,126,951	0.23%	0.75%	0.58%
NJ	0.72%	$21,231,488	2.29%	0.47%	0.36%
NM	3.09%	$8,337,030	0.90%	2.01%	1.55%
NV	4.77%	$38,680,880	4.16%	3.10%	2.39%
NY	1.40%	$54,666,166	5.88%	0.91%	0.70%
OH	1.99%	$37,463,596	4.03%	1.29%	1.00%
OK	1.05%	$3,996,826	0.43%	0.68%	0.53%
OR	1.91%	$21,596,394	2.32%	1.24%	0.96%
PA	2.06%	$78,866,327	8.49%	1.34%	1.03%

PR	3.40%	$9,261,672	1.00%	2.21%	1.70%
RI	2.09%	$6,794,132	0.73%	1.36%	1.05%
SC	2.41%	$16,003,760	1.72%	1.57%	1.21%
SD	0.61%	$280,864	0.03%	0.40%	0.31%
TN	1.89%	$13,292,396	1.43%	1.23%	0.95%
TX	0.52%	$14,177,209	1.53%	0.34%	0.26%
UT	0.88%	$3,228,108	0.35%	0.57%	0.44%
VA	1.74%	$14,300,604	1.54%	1.13%	0.87%
VT	1.13%	$1,656,272	0.18%	0.73%	0.57%
WA	0.96%	$16,673,952	1.79%	0.62%	0.48%
WI	1.51%	$20,589,945	2.22%	0.98%	0.76%
WV	0.60%	$1,487,164	0.16%	0.39%	0.30%
WY	2.19%	$2,261,733	0.24%	1.42%	1.10%
US	1.58%	$929,058,930	100.0%	1.03%	0.79%

* Annual average amount overpaid, CY 2008 – CY 2010.

Benefit Year Earnings (BYE) Performance Measure Technical Analysis

Weeks Overpaid vs. Fraud

The proposed performance measure would target those BYE errors that are considered the most serious. To meet this objective, the BYE performance measure can be defined either in terms of the number of weeks overpaid or by the proportion of BYE overpayments classified as fraud.

The Benefit Accuracy Measurement (BAM) survey samples paid and denied UI claims each week and conducts a thorough audit to determine the propriety of the decision to pay or deny benefits. Although BAM improper payment estimates refer to the single paid week that was selected for audit (referred to as the key week), BAM captures limited information concerning overpayments established outside the key week. BAM data for CY 2008 to CY 2010 show that, nationally, a little over half of all BYE errors are for five or more weeks of benefits that were improperly paid.

Distribution of Number of Weeks Overpaid
BYE Overpayments - CY 2008-2010
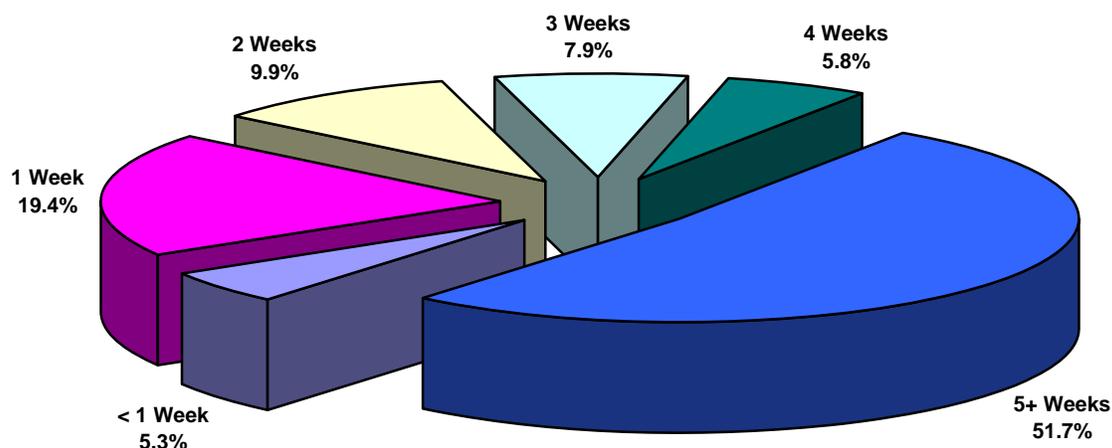
In deciding between weeks overpaid versus fraud to define the measure, both data quality and data availability need to be considered. Currently, the only source of data available for this measure is the BAM survey. In terms of data quality, the fraud definition is preferable to weeks overpaid due to the following significant limitations of the BAM data.

- BAM sample sizes at the state level are too small to produce accurate estimates of the distribution of BYE improper payments by the number of weeks overpaid. Given the current sample allocation for BAM paid claims (360 cases per year in the ten smallest states in terms of UI weeks paid and 480 cases in all other states), the number of cases coded as BYE overpayments is limited, even for multiple years.

For CY 2008 to CY 2010, cases coded as BYE overpayments ranged from 24 in Georgia to 181 in Louisiana. While sample sizes are adequate (although only marginally so in Georgia and a few other states) to estimate a binomial distribution of fraud vs. nonfraud, samples are inadequate in most states to estimate a distribution of weeks of overpayment from 1 to 26 or more.

- BAM is designed to estimate the accuracy of the single compensated week that is selected for the BAM audit. Although BAM documents overpayments for multiple weeks that are attributable to issues identified in the BAM audit in the Total Overpayments data element (H3 in the b_master table), these data are not suitable for this proposed performance measure because:

    - According to the BAM coding guidance, only overpayments officially established as a result of BAM are documented in the Total Overpayments data element. Accordingly, many states do not count overpayments established outside the key week that were detected through state Benefit Payment Control activities.

    - Issues detected on State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX) program claims may result in the establishment of overpayments for benefits paid from the Extended Benefits program and temporary programs such as Emergency Unemployment Compensation, which are included in the Total Overpayments data element in the BAM database. Because these overpayments for the episodic and temporary programs are not reported separately from overpayments in the State UI, UCFE, and UCX programs, the BAM Total Overpayments data element will overstate State UI, UCFE, and UCX overpayments.

- In the case of overpayments with multiple causes, it is not possible to separate the overpayments reported in the BAM Total Overpayments data element by cause. BYE overpayments cannot be differentiated, for example, from overpayments attributable to separation, active work search, and availability issues.

Because of the limitations of the BAM survey data, the U. S. Department of Labor (Department) would begin the process of obtaining authorization from the Office of Management and Budget (OMB) to collect population data on the number of overpayments and amounts overpaid established by state agencies by the number of weeks overpaid for BYE issues. However, in order to begin focusing on and measuring progress in reducing BYE fraud, we propose using the existing BAM data collection for this performance measure on an interim basis.

It is estimated that the development of an alternative data source would take 18 months to two years, and include the following requirements:

- Analysis and identification of an alternative metric and data collection source;
- Employment and Training Administration and Department approval of proposed data collection;

- Solicitation of states to participate in pilot testing;
- Development of pilot test procedures and instructions;
- Pilot testing by states;
- Analysis of pilot test results;
- Preparation of the Paperwork Reduction Act package for OMB approval;
- Preparation of final methodology and instructions for state implementation; and
- State agency programming of additional data collection.

Analysis - BYE Fraud Overpayments

The BAM methodology requires all overpayment errors to be classified as fraud or nonfraud. By defining the performance measure in terms of fraud BYE overpayments, the objective of reducing overpayment errors by targeting the most serious BYE violations can be met. For the period CY 2008 to CY 2010, 54.2 percent of BYE overpayments were due to fraud, slightly higher than the proportion of BYE overpayments that are five weeks or more (51.7 percent). The following table shows the U. S. aggregate and ranges by state for various metrics.

BYE Fraud CY 2008-2010	Lowest	Highest	U. S.
Average Annual Amount Overpaid (In millions of $)	SD - $0.28	CA - $180.02	$929.06
Percentage of UI Benefits	IA - 0.06%	LA - 7.27%	1.58%
Percentage of BYE Overpayments	IA - 2.92%	MS - 92.05%	54.18%

For CY 2010 alone, the U. S. percentage and amount of BYE fraud overpayments were slightly above the CY 2008 - CY 2010 averages.

BYE Fraud CY 2010	Lowest*	Highest	U. S.
Amount Overpaid (In millions of $)	MT - $0.82	CA - $164.20	$1,038.45
Percentage of Benefits	ME - 0.04%	LA - 9.08%	1.77%
Percentage of BYE Overpayments	MT - 1.38%	MS - 97.5%	53.30%

* Iowa reported no BYE fraud overpayments in CY 2010. The state reported $9.7 million in nonfraud BYE overpayments, which was 1.61% of UI benefits paid.

Estimated Affect on Annual Report and Operational Rates

The following chart shows the reduction in the Annual Report and Operational rates for various levels of reduction in the BYE fraud rate, using the preliminary CY 2010 rates of 11.51 percent (Annual Report) and 6.13 percent (Operational) as the baseline. All BYE fraud overpayments are included in both the Annual Report and Operational rates and represent 1.77 percent of UI benefits paid. If all states meet their reduction targets, the U.S. BYE fraud rate would decrease by 35 percent in the first year, and both the Annual Report and Operational rates would decrease by approximately 0.7 percentage points. After two years of implementation, the U. S. BYE fraud rate would decrease by 50 percent, and both the Annual Report and Operational rates would decrease by approximately 1.0 percentage point.

Estimated Reduction In Annual Report and Operational Rates
CY 2010 Baseline