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**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 28-13**

**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, 5<sup>th</sup> 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, 5<sup>th</sup> 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].”

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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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 Handbook<sup>1</sup> (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

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<sup>1</sup>[http://wdr.doleta.gov/directives/attach/ETHandbook\\_395\\_Ch5\\_acc.pdf](http://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

**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.

**20 CFR Part 602**  
**Quality Control in the Federal-State Unemployment Insurance System**

**Authority:** 42 U.S.C. 1302.

**Source:** 52 FR 33528, Sept. 3, 1987, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 602 appear at 71 FR 35513, June 21, 2006.

**Subpart A—General Provisions**

**§ 602.1 Purpose.**

The purpose of this part is to prescribe a Quality Control (QC) program for the Federal-State unemployment compensation (UC) system, which is applicable to the State UC programs and the Federal unemployment benefit and allowance programs administered by the State unemployment compensation agencies under agreements between the States and the Secretary of Labor (Secretary). QC will be a major tool to assess the timeliness and accuracy of State administration of the UC program. It is designed to identify errors in claims processes and revenue collections (including payments in lieu of contributions and Extended Unemployment Compensation Account collections), analyze causes, and support the initiation of corrective action.

[52 FR 33528, Sept. 3, 1987, as amended at 71 FR 35513, June 21, 2006]

**§ 602.2 Scope.**

This part applies to all State laws approved by the Secretary under the Federal Unemployment Tax Act (Section 3304 of the Internal Revenue Code of 1986, 26 U.S.C. Section 3304), to the administration of the State laws, and to any Federal unemployment benefit and allowance program administered by the State unemployment compensation agencies under agreements between the States and the Secretary. QC is a requirement for all States, initially being applicable to the largest permanently authorized programs (regular UC including Combined-Wage-Claims) and federally-funded programs (Unemployment Compensation for Ex-Servicemembers and Unemployment Compensation for Federal Employees). Other elements of the QC program (e.g., interstate, extended benefit programs, benefit denials, and revenue collections) will be phased in under a schedule determined by the Department in consultation with State agencies.

[52 FR 33528, Sept. 3, 1987, as amended at 71 FR 35513, June 21, 2006]

**Subpart B—Federal Requirements**

**§ 602.10 Federal law requirements.**

(a) Section 303(a)(1) of the Social Security Act (SSA), 42 U.S.C. 503(a)(1), requires that a State law include provision for:

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) Section 303(a)(6), SSA, 42 U.S.C. 505(a)(6), requires that a State law include provision for:

The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(c) Section 303(b), SSA, 42 U.S.C. 503(b), provides in part that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(2) a failure to comply substantially with any provision specified in subsection (a);

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State . . . .

(d) Certification of payment of granted funds to a State is withheld only when the Secretary finds, after reasonable notice and opportunity for hearing to the State agency—

(1) That any provision required by section 303(a) of the Social Security Act is no longer included in the State UC law, or

(2) That in the administration of the State UC law there has been a failure to comply substantially with any required provision of such law.

[52 FR 33528, Sept. 3, 1987, as amended at 71 FR 35513, June 21, 2006]

**§ 602.11 Secretary's interpretation.**

(a) The Secretary interprets section 303(a)(1), SSA, to require that a State law provide for such methods of administration as will reasonably ensure the prompt and full payment of unemployment benefits to eligible claimants, and collection and handling of income for the State unemployment fund (particularly taxes and reimbursements), with the greatest accuracy feasible.

(b) The Secretary interprets sections 303(a)(1) and 303(a)(6), SSA, to authorize the Department of Labor to prescribe standard definitions, methods and procedures, and reporting requirements for the QC program and to ensure accuracy and verification of QC findings.

(c) The Secretary interprets section 303(b)(2), SSA to require that, in the administration of a State law, there shall be substantial compliance with the provisions required by sections 303(a)(1) and (6). Further, conformity of the State law with those requirements is required by section 303(a) and §601.5(a) of this chapter.

(d) To satisfy the requirements of sections 303(a)(1) and (6), a State law must contain a provision requiring, or which is construed to require, the establishment and maintenance of a QC program in accordance with the requirements of this part. The establishment and maintenance of such a QC program in accordance with this part shall not require any change in State law concerning authority to undertake redeterminations of claims or liabilities or the finality of any determination, redetermination or decision.

**Subpart C—State Responsibilities****§ 602.20 Organization.**

Each State shall establish a QC 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.

**§ 602.21 Standard methods and procedures.**

Each State shall:

(a) Perform the requirements of this section in accordance with instructions issued by the Department, pursuant to §602.30(a) of this part, to ensure standardization of methods and procedures in a manner consistent with this part;

(b) Select representative samples for QC study of at least a minimum size specified by the Department to ensure statistical validity (for benefit payments, a minimum of 400 cases of weeks paid per State per year);

(c) Complete prompt and in-depth case investigations to determine the degree of accuracy and timeliness in the administration of the State UC law and Federal programs with respect to benefit determinations, benefit payments, and revenue collections; and conduct other measurements and studies necessary or appropriate for carrying out the purposes of this part; and in conducting investigations each State shall:

(1) Inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability,

(2) Use a questionnaire, prescribed by the Department, which is designed to obtain such data as the Department deems necessary for the operation of the QC program; require completion of the questionnaire by claimants in accordance with the eligibility and reporting authority under State law,

(3) Collect data identified by the Department as necessary for the operation of the QC program; however, the collection of demographic data will be limited to those data which relate to an individual's eligibility for UC benefits and necessary to conduct proportions tests to validate the selection of representative samples (the demographic data elements necessary to conduct proportions tests are claimants' date of birth, sex, and ethnic classification); and

(4) Conclude all findings of inaccuracy as detected through QC 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*, part V, sections 6010–6015 (appendix A of this part);

(d) Classify benefit case findings resulting from QC investigations as:

- (1) Proper payments, underpayments, or overpayments in benefit payment cases, or
  - (2) Proper denials or underpayments in benefit denial cases;
  - (e) Make and maintain records pertaining to the QC program, and make all such records available in a timely manner for inspection, examination, and audit by such Federal officials as the Secretary may designate or as may be required or authorized by law;
  - (f) Furnish information and reports to the Department, including weekly transmissions of case data entered into the automated QC system and annual reports, without, in any manner, identifying individuals to whom such data pertain; and
  - (g) Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.
- (Approved by the Office of Management and Budget under Control Number 1205–0245)

**§ 602.22 Exceptions.**

If the Department determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law or in the Department's view is not cost effective, the Department shall use established procedures to advise the State that it is partially or totally excepted from the specified requirements of this part. Any determination under this section shall be made only after consultations with the State agency.

**Subpart D—Federal Responsibilities**

**§ 602.30 Management.**

- (a) The Department shall establish required methods and procedures (as specified in §602.21 of this part); and provide technical assistance as needed on the QC process.
- (b) The Department shall consider and explore alternatives to the prescribed sampling, study, recordkeeping, and reporting methodologies. This shall include, but not be limited to, testing the obtaining of information needed for QC by telephone and mail rather than in face-to-face interviews.
- (c) The Department shall maintain a computerized data base of QC case data which is transmitted to the Department under §602.21, which will be combined with other data for statistical and other analysis such as assessing the impact of economic cycles, funding levels, and workload levels on program accuracy and timeliness.

**§ 602.31 Oversight.**

The Department shall review QC operational procedures and samples, and validate QC methodology to ensure uniformity in the administration of the QC program and to ensure compliance with the requirements of this part. The Department shall, for purposes of determining eligibility for grants described in §602.40, annually review the adequacy of the administration of a State's QC program.

## **Subpart E—Quality Control Grants to States**

### **§ 602.40 Funding.**

(a) The Department shall use established procedures to notify States of the availability of funds for the operation of QC programs in accordance with this part.

(b) The Department may allocate additional resources, if available, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action.

[52 FR 33528, Sept. 3, 1987, as amended at 71 FR 35513, June 21, 2006]

### **§ 602.41 Proper expenditure of Quality Control granted funds.**

The Secretary may, after reasonable notice and opportunity for hearing to the State agency, take exception to and require repayment of an expenditure for the operation of a QC program if it is found by the Secretary that such expenditure is not necessary for the proper and efficient administration of the QC program in the State. See sections 303(a)(8), 303(a)(9) and 303(b)(2), SSA, and 20 CFR 601.5. For purposes of this section, an expenditure will be found not necessary for proper and efficient administration if such expenditure fails to comply with the requirements of subpart C of this part.

[52 FR 33528, Sept. 3, 1987, as amended at 52 FR 34343, Sept. 10, 1987]

### **§ 602.42 Effect of failure to implement Quality Control program.**

Any State which the Secretary finds, after reasonable notice and opportunity for hearing, has not implemented or maintained a QC program in accordance with this part will not be eligible for any grants under title III of the Social Security Act until such time as the Secretary is satisfied that there is no longer any failure to conform or to comply substantially with any provision specified in this part. See sections 303(a)(1), 303(a)(6), and 303(b)(2), SSA, and 20 CFR 601.5.

### **§ 602.43 No incentives or sanctions based on specific error rates.**

Neither sanctions nor funding incentives shall be used by the Department to influence the achievement of specified error rates in State UC programs.

## **Appendix A to Part 602—Standard for Claim Determinations—Separation Information**

Employment Security Manual (Part V, Sections 6010–6015)

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

“Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due.”

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

“Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.”

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

“Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation. . . .”

Section 3306(h) of the Federal Unemployment Tax Act defines “compensation” as “cash benefits payable to individuals with respect to their unemployment.”

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements:*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria:*

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's

own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.
3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.
4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.
5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determination notices.*

1. The agency must give each claimant a written notice of:
  - a. Any monetary determination with respect to his benefit year;
  - b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation of his applicant identification card or otherwise in writing.
  - c. Any other determination which adversely affects<sup>1</sup> his rights to benefits, except that written notice of determination need not be given with respect to:

<sup>1</sup> A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined

overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits.*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the

reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions.*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanation of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause,"

rather than merely the phrase “voluntary quit.” Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as non-work days, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, “For other information about your (appeal), (protest), (redetermination) rights, see pages \_\_ to \_\_ of the \_\_\_\_ (name of pamphlet or booklet) heretofore furnished to you.”

#### 6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria:*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the

employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the workers will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

*B. Information to worker.*

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or

anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.